ITEM 1008-D

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97TH CONGRESS
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HOUSE OF REPRESENTATIVES

REPT. 97-491
Part 1

PROVIDING FOR REPOSITORIES FOR THE DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTE, TRANSURANIC WASTE, AND SPENT NUCLEAR FUEL, TO AMEND PROVISIONS OF THE ATOMIC ENERGY ACT OF 1954 RELATING TO LOW-LEVEL WASTE, TO MODIFY THE PRICE-ANDERSON PROVISIONS OF THE ATOMIC ENERGY ACT OF 1954 AND CERTAIN OTHER PROVISIONS PERTAINING TO FACILITY LICENSING AND SAFETY, AND FOR OTHER PURPOSES.

April 27, 1982.—Ordered to be printed

Mr. UDALL, from the Committee on Interior and Insular Affairs, submitted the following

COMPLETED

REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R. 3809 which on June 4, 1981, was referred jointly to the Committees on Energy and Commerce, Interior and Insular Affairs, and Rules.]

[Including cost estimate of the Congressional Budget Office]

The Committee on Interior and Insular Affairs, to whom was referred the bill (H.R. 3809) to provide for repositories for the disposal of high-level radioactive waste, transuranic waste, and spent nuclear fuel, to amend provisions of the Atomic Energy Act of 1954 relating to low-level waste, to modify the Price-Anderson provisions of the Atomic Energy Act of 1954 and certain other provisions pertaining to facility licensing and safety, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Page 1, after line 2, strike all after the enacting clause and insert the following:

SHORT TITLE AND TABLE OF CONTENTS

SECTION 1. This Act may be cited as the "Nuclear Waste Policy Act of 1982".

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DEFINITIONS

Sec. 2. For purposes of this Act:

(1) The term "Administrator" means the Administrator of the Environmental Protection Agency.

(2) The term "Commission" means the Nuclear Regulatory Commission.

(3) The term "disposal" means isolation from the biosphere with no foreseeable intent of recovery.

(4) The term "Fund" means the Nuclear Waste Trust Fund established in section 124.

(5) The term "Governor" means the chief executive officer of a State.

(6) The term "high-level radioactive waste" means—

(A) the highly radioactive material resulting from the reprocessing of spent nuclear fuel, including liquid waste produced directly in reprocessing and any solid material into which such liquid waste is made; and

(B) such other highly radioactive material, and such transuranic waste, as the Commission designates as high-level radioactive waste following a determination that such designation is necessary to protect the public health or safety, or the environment.

(7) The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary of the Interior because of their status as Indians, including any Alaska Native village, as defined in section 3(c) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(c)).

(8) The term "low-level radioactive waste" means radioactive material that—

(A) is not high-level radioactive waste, spent nuclear fuel, or byproduct material as defined in section 11 e. (2) of the Atomic Energy Act of 1954 (42 U.S.C. 2014(e)(2)); and

(B) the Commission classifies as low-level radioactive waste.

(9) The term "Office" means the Office of Radioactive Waste Management established in section 231.

(10) The term "repository" means any system licensed by the Commission that is intended to be used for, or may be used for, the permanent deep geologic disposal of high-level radioactive waste and spent nuclear fuel, whether or not such facility is designed to permit the recovery, for a limited period during initial operation, of any materials placed in such facility. Such term includes both surface and subsurface areas at which waste handling activities are conducted.

(11) The term "reservation" means——

(A) the Indian reservations and dependent Indian communities referred to in clauses (a) and (b) of section 1151 of title 18, United States Code; and

(B) lands selected by Alaska Native villages or regional corporations under the provisions of the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).

(12) The term "Secretary" means the Secretary of Energy.

(13) The term "site characterization" means a program of exploration and research, both in the laboratory and in the field, undertaken to establish the geologic condition and the ranges of the parameters of a particular site relevant to the location of a repository. Such term includes borings, surface excavations, excavations of exploratory shafts, limited subsurface lateral excavations and borings, and in situ testing needed to evaluate the suitability of a site for the location of a repository, but does not include preliminary borings and geophysical testing needed to assess whether site characterization should be undertaken.

(14) The term "spent nuclear fuel" means fuel that has been withdrawn from a nuclear reactor following irradiation, the constituent elements of which have not been separated by reprocessing.

(15) The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

(16) The term "storage" means retention of radioactive waste with the intent to recover such waste for subsequent use, reprocessing, or disposal.

(17) The term "Storage Fund" means the Interim Storage Trust Fund established in section 138(c).

(18) The term "transuranic waste" means material contaminated with elements that have an atomic number greater than 92, including neptunium, plutonium, americium, and curium, that have a half life greater than 5 years, and that are in such concentrations as the Commission determines is necessary to protect the public health or safety, or the environment.

SEPARABILITY

Sec. 3. If any provision of this Act, or the application of such provision to any person or circumstance, is held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

TERRITORIES AND POSSESSIONS

Sec. 4. Nothing in this Act shall be deemed to repeal, modify, or amend the provisions of section 605 of the Act of March 12, 1980 (48 U.S.C. 1491).

TITLE I—HIGH-LEVEL RADIOACTIVE WASTE AND SPENT NUCLEAR FUEL

Subtitle A—Repositories for Disposal of High-Level Radioactive Waste and Spent Nuclear Fuel

FINDINGS AND PURPOSES

Sec. 111. (a) Findings.—The Congress finds that—

(1) radioactive waste creates potential risks and requires safe and environmentally acceptable methods of disposal;

(2) a national problem has been created by the accumulation of (A) spent nuclear fuel from nuclear reactors; and (B) radioactive waste from (i) reprocessing of spent nuclear fuel; (ii) activities related to medical research, diagnosis, and treatment; and (iii) other sources;

(3) Federal efforts during the past 30 years to devise a permanent solution to the problems of radioactive waste disposal have not been adequate;

(4) while the Federal Government has the responsibility to provide for the permanent disposal of high-level radioactive waste and such spent nuclear fuel as may be disposed of in order to protect the public health and safety, the environment, and the common defense and security, the costs of such disposal should be the responsibility of the generators and owners of such waste and spent fuel;

(5) the generators and owners of high-level radioactive waste and spent nuclear fuel have the primary responsibility to provide for, and the responsibility to pay the costs of, the interim storage of such waste and spent fuel until such waste and spent fuel is accepted by the Secretary in accordance with the provisions of this Act;

(6) State and public participation in the planning and development of repositories is essential in order to promote public confidence with regard to the safety of disposal of such waste and spent fuel; and

(7) high-level radioactive waste and spent nuclear fuel have become major issues of public concern, and appropriate precautions must be taken to ensure that such waste and spent fuel do not adversely affect the public health and safety and the environment for this or future generations.

(b) PURPOSES.—The purposes of this subtitle are—

(1) to establish a schedule for the siting, construction, and operation of licensed repositories for the disposal of high-level radioactive waste and such spent nuclear fuel as may be disposed of that will provide a reasonable assurance that the public and the environment will be adequately protected from the hazards posed by such waste and spent fuel;

(2) to establish the Federal responsibility, and a definite Federal policy, for the disposal of such waste and spent fuel;

(3) to define the relationship between the Federal Government and the State governments with regard to the disposal of such waste and spent fuel; and

(4) to establish a Nuclear Waste Trust Fund, composed of payments made by the generators and owners of such waste and spent fuel, that will ensure that the costs of carrying out activities relating to the disposal of such waste and spent fuel will be borne by the persons responsible for generating such waste and spent fuel.

RECOMMENDATION OF SITES FOR SITE CHARACTERIZATION

SEC. 112. (a) GUIDELINES.—Not later than 180 days after the date of the enactment of this Act, the Secretary, following consultation with the Council on Environmental Quality, the Administrator of the Environmental Protection Agency, the Nuclear Regulatory Commission, and the Director of the Geological Survey, shall issue general guidelines for the recommendation of sites for repositories. Such guidelines shall specify detailed geologic considerations that shall be primary criteria for the selection of sites in various geologic media. Such guidelines shall specify factors that qualify or disqualify a site from development as a repository, including factors pertaining to the location of valuable natural resources, proximity to populations, hydrogeophysics, seismic activity, and nuclear defense activities. Subject to any applicable requirements of the Commission, such guidelines shall require the Secretary, in recommending sites for a repository to be developed under this Act, to give priority to sites in media possessing geochemical characteristics that retard aqueous transport of radionuclides. Such guidelines shall provide that any site shall be disqualified from development as a repository if such site is, according to the most recent applicable report on population and population density prepared by the Bureau of the Census before the date such site is considered for site characterization or construction authorization, as the case may be, located in any metropolitan statistical area, county, urbanized area, or place, having both (1) a population of not less than 2,500 individuals; and (2) a population density of not less than 1,000 individuals per square mile. Such guidelines shall require the Secretary to consider the various geologic media in which sites for repositories may be located and, to the extent economically and technically practicable, to recommend sites in different geologic media. The Secretary shall use guidelines established under this subsection in considering sites for recommendation under subsection (b). The Secretary may revise such guidelines from time to time.

(b) RECOMMENDATION BY SECRETARY TO THE PRESIDENT.—(1) Not later than one year after the date of the enactment of this Act, and following the issuance of guidelines under subsection (a), the Secretary shall recommend to the President at least 3 sites in not less than 3 different geologic media that he determines suitable for site characterization for a repository. Not later than February 1, 1985, the Secretary shall recommend to the President at least 2 additional sites that the Secretary determines are suitable for site characterization. At least one of such additional sites shall be in a granite geologic medium, and neither of such additional sites shall have been under prior consideration as a repository site. Each recommendation of a site under this subsection shall include a detailed statement of the basis for the recommendation. Upon recommending a site to the President, the Secretary shall notify the Governor and legislature of the State in which such site is located, or the governing body of the Indian tribe on whose reservation such site is located, as the case may be, of the recommendation of the Secretary and the basis for such recommendation.

(2) Before recommending to the President any site for site characterization, the Secretary shall hold public hearings in the vicinity of such site to inform the residents of the area in which such site is located of the proposed recommendation and to receive their comments. At such hearings, the Secretary shall also solicit and receive any recommendations of such residents with respect to issues that should be addressed in the environmental assessment and site characterization plan described in subparagraphs (A) and (B) of section 113(b)(1).

(c) PRESIDENTIAL REVIEW OF RECOMMENDED SITES.—(1) The President shall review each site recommendation made by the Secretary under subsection (b). Not later than 60 days after the submission by the Secretary of a recommendation for a site, the President, in his discretion, may either approve or disapprove such site, and shall transmit any such decision to the Secretary and to either the Governor and legislature of the State in which such site is located, or the governing body of the Indian tribe on whose reservation such site is located, as the case may be. If, during such 60-day period, the President fails to approve or disapprove such site, or fails to invoke his authority under paragraph (2) to delay his decision, such site shall be considered to be approved, and the Secretary shall notify such Governor and legislature, or governing body of the Indian tribe, of the approval of such site by reason of the inaction of the President.

(2) The President may delay for not more than 6 months his decision under paragraph (1) to approve or disapprove a site upon determining that the information provided with the recommendation of the Secretary is insufficient to permit a decision within the 60-day period referred to in paragraph (1). The President may invoke his authority under this paragraph by submitting written notice to the Congress, within such 60-day period, of his intent to invoke such authority. If the President invokes such authority, but fails to approve or disapprove the site involved by the end of such 6-month period, such site shall be considered to be approved, and the Secretary shall notify such Governor and legislature, or governing body of the Indian tribe, of the approval of such site by reason of the inaction of the President.

(d) CONTINUATION OF SITE SCREENING.—After the identification of sites under subsection (b), the Secretary may continue, as he determines necessary, to identify and study other sites to determine their suitability for site characterization, in accordance with the procedures described in this section.

(e) PRELIMINARY ACTIVITIES.—Each activity of the President or the Secretary under this section shall be considered to be a preliminary decisionmaking activity. No such activity shall be considered to be a major Federal action under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), or to require the preparation of any environmental impact statement under subparagraph (E) or (F) of section 102(2) of such Act.

SITE CHARACTERIZATION

SEC. 113. (a) IN GENERAL.—The Secretary shall carry out, in accordance with the provisions of this section, appropriate site characterization activities at each site approved under section 112.

(b) COMMISSION AND STATES.—(1) Before proceeding to sink shafts at any site, the Secretary shall submit for such site to the Commission and to either the Governor and legislature of the State in which such site is located, or the governing body of the Indian tribe on whose reservation such site is located, as the case may be, for their review and comment—

(A) an environmental assessment of the probable impacts of the site characterization activities planned for such site and a discussion of alternative activities relating to site characterization that may be undertaken to avoid such impacts;

(B) a general plan for site characterization activities to be conducted at such site, which plan shall include—

(i) a description of such site;

(ii) a description of such site characterization activities, including the following: the extent of planned excavations, plans for any onsite testing with radioactive material, plans for any investigation activities that may affect the capability of such site to isolate high-level radioactive waste and spent nuclear fuel, and plans to control any adverse, safety-related impacts from such site characterization activities;

(iii) plans for the decontaminating and decommissioning of such site, if it is determined unsuitable for application for a construction authorization for a repository; and

(iv) any other information required by the Commission;

(C) site specific criteria to be used to determine the suitability of such site for the location of a repository, developed pursuant to section 112(a);

(D) a description of the possible form or packaging for the high-level radioactive waste and spent nuclear fuel to be emplaced in such repository, a description of the relationship between such waste form or packaging and the geologic medium of such site, and a description of the research and development activities being conducted by the Secretary that deal with such possible waste form or packaging or such relationship; and

(E) a site specific conceptual repository design.

(2) Before proceeding to sink shafts at any site, the Secretary shall (A) make available to the public the environmental assessment and site characterization plan described in subparagraphs (A) and (B) of paragraph (1); and (B) hold public hearings in the vicinity of such site to inform the residents of the area in which such site is located of such assessment and plan, and to receive their comments.

(3) During the conduct of site characterization activities at a site, the Secretary shall report to the Commission and to either the Governor and legislature of the State in which such site is located, or the governing body of the Indian tribe on whose reservation such site is located, as the case may be, on the nature and extent of such activities and the information developed from such activities.

(c) Restrictions.—(1) The Secretary may conduct at any site only such site characterization activities as the Secretary considers necessary to provide the data required for evaluation of the suitability of such site, for an application to be submitted to the Commission for a construction authorization for a repository at such site, and for compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(2) In conducting site characterization activities—

(A) the Secretary may not use radioactive materials at a site unless the Commission concurs that such use is necessary to provide data for the preparation of the required environmental reports and an application for a construction authorization for a repository at such site; and

(B) if radioactive materials are used at a site—

(i) the Secretary shall use the minimum quantity necessary to achieve the test results to determine the suitability of such site for a repository, but in no event more than the curie equivalent of 10 metric tons of spent nuclear fuel; and

(ii) any radioactive material used or placed at or in such site shall be fully retrievable.

(3)(A) The Secretary shall not continue site characterization activities at any site if the Secretary determines (i) that such site is unsuitable for eventual development as a licensed repository; or (ii) that such site characterization activities should be terminated for any other reason. Following any such determination, the Secretary shall submit a report to the Congress setting forth the reasons for such determination.

(B) If site characterization activities are terminated at a site for any reason, the Secretary shall (i) notify the Governor and legislature of the State in which such site is located, or the governing body of the Indian tribe on whose reservation such site is located, as the case may be, of such termination; and (ii) remove any high-level radioactive waste, spent nuclear fuel, or other radioactive materials at or in such site as promptly as practicable.

(d) Preliminary Activities.—Each activity of the Secretary under this section that is in compliance with the provisions of subsection (c) shall be considered a preliminary decisionmaking activity. No such activity shall be considered to be a major Federal action under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), or to require the preparation of any environmental impact statement under subparagraph (E) or (F) of section 102(2) of such Act.

SITE APPROVAL AND CONSTRUCTION AUTHORIZATION

SEC. 114. (a) HEARINGS AND PRESIDENTIAL RECOMMENDATION.—(1) The Secretary shall hold public hearings in the vicinity of each site under consideration for recommendation to the President under this paragraph as a site for the development of a repository, for the purposes of informing the residents of the area in which such site is located of such consideration and receiving their comments regarding the possible recommendation of such site. If, upon completion of such hearings and completion of site characterization activities at not less than 3 sites under section 113, the Secretary decides to recommend approval of such site to the President, the Secretary shall notify the Governor and legislature of the State in which such site is located, or the governing body of the Indian tribe on whose reservation such site is located, as the case may be, of such decision. No sooner than the expiration of the 30-day period following such notification, the Secretary may submit to the President a recommendation that the President approve such site for the development of a repository. Any such recommendation by the Secretary shall be based on the record of information developed by the Secretary under section 113 and this section, including the information described in subparagraph (A) through subparagraph (G). Together with any recommendation of a site under this paragraph, the Secretary shall make available to the public, and submit to the President, a comprehensive statement of the basis of such recommendation, including the following:

(A) a description of the proposed repository, including preliminary engineering specifications for the facility;

(B) a description of the waste form or packaging proposed for use at such repository, and an explanation of the relationship between such waste form or packaging and the geologic medium of such site;

(C) a discussion of data, obtained in site characterization activities, relating to the safety of such repository site;

(D) a final environmental impact statement, as required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), including an analysis of the consideration given by the Secretary to not less than 3 sites identified under section 112, together with comments made concerning such environmental impact statement by the Secretary of the Interior, the Council on Environmental Quality, the Administrator, and the Commission, except that any such environmental impact statement concerning the first repository to be developed under this Act shall not be required to consider the need for a repository or the alternatives to geologic disposal;

(E) preliminary comments of the Commission concerning the extent to which the at-depth site characterization analysis and the waste form proposal for such site seem to be sufficient for inclusion in any application to be submitted by the Secretary for licensing of such site as a repository;

(F) the views and comments of the Governor and legislature of any State, or the governing body of any Indian tribe, that is affected by such site, as determined by the Secretary, together with the response of the Secretary to such views;

(G) such other information as the Secretary considers appropriate; and

(H) any impact report submitted under section 116(b)(2)(B)(i) by the State in which such site is located, or under 118(b)(2)(B)(i) by the Indian tribe on whose reservation such site is located, as the case may be.

(2) Not later than March 30, 1987, the President shall submit to the Congress a recommendation of a site that the President considers qualified for application for a construction authorization for a repository. The President shall submit with such recommendation a copy of the report for such site prepared by the Secretary under paragraph (1). After submission of the first such recommendation, the President may submit to the Congress recommendations for other sites, in accordance with the provisions of this subtitle.

(3) If approval of such first site recommendation does not take effect as a result of a disapproval by the Governor and legislature of a State under section 116 or the governing body of an Indian tribe under section 118, the President shall submit to the Congress, not later than one year after the disapproval of such recommendation, a recommendation of another site for the first repository.

(4)(A) The President may not recommend the approval of any site under this subsection unless the Secretary has recommended to the President under paragraph (1) approval of such site and has submitted to the President a report for such site as required under such paragraph.

(B) No recommendation of a site by the President under this subsection shall be considered a major Federal action under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), or be considered to require the preparation of any environmental impact statement under subparagraph (E) or (F) of section 102(2) of such Act.

(b) SUBMISSION OF APPLICATION.—If the President recommends to the Congress a site for a repository under subsection (a) and the site designation is permitted to take effect under section 115, the Secretary shall submit to the Commission an application for a construction authorization for a repository at such site not later than 90 days after the date on which the recommendation of the site designation is effective under such section and shall provide to the Governor and legislature of the State in which such site is located, or the governing body of the Indian tribe on whose reservation such site is located, as the case may be, a copy of such application.

(c) STATUS REPORT ON APPLICATION.—Not later than one year after the date on which an application for a construction authorization is submitted under subsection (b), and annually thereafter until the date on which such authorization is granted, the Commission shall submit a report to the Congress describing the proceedings undertaken through the date of such report with regard to such application, including a description of—

(1) any major unresolved safety issues, and the explanation of the Secretary with respect to design and operation plans for resolving such issues;

(2) any matters of contention regarding such application;

(3) any Commission actions regarding the granting or denial of such authorization.

(d) COMMISSION ACTION.—The Commission shall consider an application for a construction authorization for all or part of a repository in accordance with the laws applicable to such applications, except that the Commission shall issue a final decision approving or disapproving the issuance of a construction authorization for the first such application not later than—

(1) January 1, 1989; or

(2) the expiration of 3 years after the date of the submission of such application, except that the Commission may extend such deadline by not more than 12 months if, not less than 30 days before such deadline, the Commission complies with the reporting requirements established in subsection (e)(2);

whichever occurs later.

(e) PROJECT DECISION SCHEDULE.—(1) The Secretary shall prepare and update, as appropriate, in cooperation with all affected Federal agencies, a project decision schedule that portrays the optimum way to attain the operation of the repository involved, within the time periods specified in this subtitle. Such schedule shall include a description of objectives and a sequence of deadlines for all agencies required to take action, including an identification of the activities in which a delay in the start, or completion, of such activities will cause a delay in beginning repository operation.

(2) Any Federal agency that determines that it cannot comply with any deadline in the project decision schedule, or fails to so comply, shall submit to the Secretary and to the Congress a written report explaining the reason for its failure or expected failure to meet such deadline, the reason why such agency could not reach an agreement with the Secretary, the estimated time for completion of the activity or activities involved, the associated effect on its other deadlines in the project decision schedule, and any recommendations it may have or actions it intends to take regarding any improvements in its operation or organization, or changes to its statutory directives or authority, so that it will be able to mitigate the delay involved. The Secretary, within 30 days after receiving any such report, shall file with the Congress his response to such report, including the reasons why the Secretary could not amend the project decision schedule to accommodate the agency involved.

(f) ENVIRONMENTAL IMPACT STATEMENT.—Any recommendation made by the Secretary under this section shall be considered a major Federal action significantly affecting the quality of the human environment for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). A final environmental impact statement prepared by the Secretary under such Act shall accompany any recommendation to the President to approve a site for a repository. With respect to the requirements imposed by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), compliance with the procedures and requirements of this Act shall be deemed adequate consideration of the need for a repository, the time of the initial availability of a repository, and all alternatives to a repository for the isolation of spent nuclear fuel and high-level radioactive waste. The Secretary shall consider as alternate sites for the first repository not less than 3 sites recommended by the Secretary under section 112 and approved by the President for site characterization under such section. Any environmental impact statement prepared in connection with a repository proposed to be constructed by the Secretary under this subtitle shall, to the extent practicable, be adopted by the Commission in connection with the issuance by the Commission of a construction authorization for such repository. In any such statement prepared with respect to the first repository to be constructed under this subtitle, the Commission shall not consider the need for a repository or nongeologic alternatives to the site of such repository.

REVIEW OF REPOSITORY SITE SELECTION

SEC. 115. (a) IN GENERAL.—The designation of a site as suitable for application for a construction authorization for a repository shall be effective at the end of the 60-day period beginning on the date that the President recommends such site to the Congress under section 114, unless the Governor and legislature of the State in which such site is located, or the governing body of an Indian tribe on whose reservation such site is located, as the case may be, has submitted to the Congress a notice of disapproval under section 116 or 118. If any such notice of disapproval has been submitted, the designation of such site shall not be effective except as provided under subsection (b).

(b) CONGRESSIONAL REVIEW OF SITES.—(1) If any notice of disapproval of a repository site designation has been submitted to the Congress under section 116 or 118 after a recommendation for approval of such site has been made by the President under section 114, such site shall be disapproved unless, during the first period of 90 calendar days of continuous session of the Congress after the date of the receipt by the Congress of such notice of disapproval, the Congress passes a resolution in accordance with this subsection approving such site, and such resolution thereafter becomes law. For purposes of this subsection, the term "resolution" means a joint resolution of either House of the Congress the matter after the resolving clause of which is as follows: "That there hereby is approved the site at   for a repository, with respect to which a notice of disapproval was submitted by   on   .". The first blank space in such resolution shall be filled with the geographic location of the proposed repository site involved; the second blank space in such resolution shall be filled with the designation of the State Governor and legislature, or Indian tribe governing body, submitting such notice of disapproval; and the last blank space in such resolution shall be filled with the date of such submission.

(2) The provisions of paragraphs (3) through (7) of this subsection are enacted by the Congress—

(A) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such are deemed a part of the rules of each such House, respectively, but applicable only with respect to the procedure to be followed in the case of any resolution subject to this subsection; and such provisions supersede other rules only to the extent that they are inconsistent with such other rules; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of such House) at any time, in the same manner and to the same extent as in the case of any other rule of such House.

(3) Upon introduction, any resolution with respect to any site designation shall immediately be referred to the appropriate committee or committees (and all resolutions with respect to the same site designation shall be referred to the same committee or committees) by the President of the Senate or the Speaker of the House of Representatives, as the case may be.

(4)(A) If any committee to which a resolution with respect to a site designation has been referred has not reported it at the end of 60 calendar days after its referral, it shall be in order to move either to discharge such committee from further consideration of such resolution or to discharge such committee from further consideration of any other resolution with respect to such site designation that has been referred to such committee.

(B) A motion to discharge a committee from consideration of a resolution with respect to a site designation may be made only by an individual favoring such resolution and shall be highly privileged (except that it may not be made after such committee has reported a resolution with respect to the same site designation). Debate on such motion shall be limited to not more than one hour, to be divided equally between those favoring and those opposing such resolution. An amendment to such motion shall not be in order, and it shall not be in order to move to reconsider the vote by which such motion was agreed to or disagreed to.

(C) If a motion to discharge any committee is agreed to or disagreed to, such motion may not be renewed, nor may another motion to discharge such committee be made with respect to any other resolution with respect to the same site designation.

(5)(A) When all committees to which a resolution has been referred have reported such resolution, or have been discharged from further consideration of such resolution, it shall be at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of such resolution. Such motion shall be highly privileged and shall not be debatable. An amendment to such motion shall not be in order, and it shall not be in order to move to reconsider the vote by which such motion was agreed to or disagreed to.

(B) Debate on a resolution shall be limited to not more than 5 hours, which shall be divided equally between those favoring and those opposing such resolution. A motion to further limit debate shall not be debatable. An amendment to, or motion to recommit, such resolution shall not be in order, and it shall not be in order to move to reconsider the vote by which such resolution was agreed to or disagreed to.

(6)(A) Motions to postpone made with respect to the discharge from committee or the consideration of a resolution, and motions to proceed to the consideration of other business, shall be decided without debate.

(B) Appeals from the decision of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution shall be decided without debate.

(7) If one House of the Congress receives from the other House a resolution respecting a site for a repository, then the following procedure applies:

(A) The resolution of the other House with respect to such site shall not be referred to a committee.

(B) With respect to the resolution of the first House with respect to such site—

(i) the procedure with respect to that or other resolutions of such House with respect to such site shall be the same as if no resolution from the other House with respect to such site had been received; but

(ii) on any vote on final passage of a resolution of the first House with respect to such site a resolution from the other House with respect to such site where the text is identical shall be automatically substituted for the resolution of the first House.

(c) Computation of Days.—For purposes of subsection (b)—

(1) continuity of session of Congress is broken only by an adjournment sine die; and

(2) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 90-day period referred to in subsection (b)(1) and the 60-day period referred to in subsection (b)(4)(A).

(d) Information Provided to Congress.—In considering any notice of disapproval submitted to the Congress under section 116 or 118, the Congress may obtain any comments of the Commission with respect to such notice of disapproval. The provision of such comments by the Commission shall not be construed as binding the Commission with respect to any licensing or authorization action concerning the repository involved.

PARTICIPATION OF STATES

Sec. 116. (a) State Participation in Repository Licensing Decisions.—(1) Unless otherwise provided by State law, the Governor and the legislature of each State shall have authority to jointly submit a notice of disapproval to the Congress under paragraph (2). In any case in which State law provides for submission of any such notice of disapproval by any other person or entity, any reference in this subtitle to the Governor and legislature of such State shall be considered to refer instead to such other person or entity.

(2) Upon the submission by the President to the Congress of a recommendation of a site for a repository, the Governor and legislature of the State in which such site is located may disapprove the site designation and submit to the Congress a notice of such disapproval. Such Governor and legislature may submit such a notice of disapproval to the Congress not later than the 60 days after the date that the President recommends such site to the Congress under section 114. A notice of disapproval shall be considered to be submitted to the Congress on the date of the transmittal of such notice of disapproval to the Speaker of the House and the President pro tempore of the Senate. Such notice of disapproval shall be accompanied by a statement

of reasons explaining why such Governor and legislature disapproved the recommended repository site involved.

(3) The authority of the Governor and legislature of each State under this subsection shall not be applicable with respect to any site located on a reservation.

(b) FINANCIAL ASSISTANCE.—(1)(A) The Secretary shall make grants to each State in which a site for a repository is approved under section 112(c). Such grants may be made to each such State only for purposes of enabling such State—

(i) to review activities taken under this subtitle with respect to such site for purposes of determining any potential economic, social, public health and safety, and environmental impacts of such repository on the State and its residents;

(ii) to develop a request for impact assistance under paragraph (2);

(iii) to engage in any monitoring, testing, evaluation, or other research activities, with respect to site characterization programs with regard to such site;

(iv) to provide information to its residents regarding any activities of such State, the Secretary, or the Commission with respect to such site; and

(v) to request information from, and make comments and recommendations to, the Secretary regarding any activities taken under this subtitle with respect to such site.

(B)(i) The amount of funds provided to any State under this paragraph in any fiscal year may not exceed 75 percent of the costs incurred by such State with respect to the activities described in clauses (i) through (v) of subparagraph (A). Any salary or travel expense that would ordinarily be incurred by such State, or by any political subdivision of such State, may not be considered eligible for funding under this paragraph.

(ii) Each State receiving a grant under this paragraph shall use, with respect to each fiscal year, not less than $100,000 of such grant for the activity described in subparagraph (A)(iv).

(2)(A) The Secretary shall provide financial and technical assistance to any State requesting such assistance in which there is a site with respect to which the Commission has authorized construction of a repository. Such assistance shall be designed to mitigate the impact on such State of the development of such repository. Such assistance shall be provided to such State as soon as practicable following granting by the Commission of a construction authorization for such repository and following the completion of judicial review of any action seeking to prohibit such construction.

(B)(i) Any State desiring assistance under this paragraph shall prepare and submit to the Secretary a report on any economic, social, public health and safety, and environmental impacts that are likely as a result of the development of a repository at a site in such State. Such report shall be submitted to the Secretary following the completion of site characterization activities at such site and before the recommendation of such site to the President by the Secretary for application for a construction authorization for a repository.

(ii) The Secretary shall submit any request of a State for impact assistance under this paragraph to the President and the Congress, together with the impact report prepared by such State under clause (i) and an estimate prepared by the Secretary with respect to the total cost of implementing the impact assistance plan of such State.

(3) The Secretary shall grant to each State in which a site for a repository is approved under section 112(c) an amount each fiscal year equal to the amount such State would receive were it authorized to tax site characterization activities at such site, and the development and operation of such repository, as such State taxes the other industrial activities occurring within such State. Such grants shall continue until such time as all such activities, development, and operation are terminated at such site.

(4)(A) A State may not receive any grant under paragraph (1) after the expiration of the one-year period following—

(i) the date on which the Secretary notifies the Governor and legislature of the State involved of the termination of site characterization activities at the site involved in such State;

(ii) the date on which the site in such State is disapproved under section 115; or

(iii) the date on which the Commission disapproves an application for a construction authorization for a repository at such site;

whichever occurs first, unless there is another site in the State approved under section 112(c) with respect to which the actions described in clauses (i), (ii), and (iii) have not been taken.

(B) At the end of the one-year period beginning on the effective date of any operating license for a repository in a State, no Federal funds shall be made available to such State under paragraph (1) or (2), except for—

(i) such funds as may be necessary to support State activities related to any other repository located in, or proposed to be located in, such State, and for which an operating license has not been in effect for more than one year; and

(ii) such funds as may be necessary to support State activities pursuant to agreements or contracts for impact assistance entered into, under paragraph (2), by such State with the Secretary before the end of such one-year period.

(5) Financial assistance authorized in this subsection shall be made out of amounts held in the Nuclear Waste Trust Fund established in section 124.

(c) ADDITIONAL NOTIFICATION AND CONSULTATION.—Whenever the Secretary is required under any provision of this Act to notify or consult with the governing body of an Indian tribe on whose reservation a site is located, the Secretary shall also notify or consult with, as the case may be, the Governor of the State in which such reservation is located.

CONSULTATION WITH STATES AND INDIAN TRIBES

SEC. 117. (a) PROVISION OF INFORMATION.—The Secretary, the Commission, and other agencies involved in the construction, operation, or regulation of any aspect of a repository in a State shall provide to the Governor and legislature of such State, and to the governing body of any Indian tribe affected, timely and complete information regarding determinations or plans made with respect to the siting, development, design, construction, operation, or regulation of such repository.

(b) CONSULTATION AND COOPERATION.—In performing any study of an area within a State for the purpose of determining the suitability of such area for a repository, and in subsequently developing and loading any repository within such State, the Secretary shall consult and cooperate with the Governor and legislature of such State and the governing body of any affected Indian tribe in an effort to resolve the concerns of such State and any affected Indian tribe regarding the public health and safety, environmental, and economic impacts of any such repository. In carrying out his duties under this subtitle, the Secretary shall take such concerns into account to the maximum extent feasible.

(c) WRITTEN AGREEMENT.—As soon as possible after notifying a State of his decision to study an area within such State as a possible repository site, the Secretary shall seek to enter into a written agreement with such State and, where appropriate, a separate agreement with the governing body of any affected Indian tribe, setting forth the procedures under which the requirements of subsections (a) and (b) shall be carried out. Such written agreement shall specify procedures—

(1) by which such State or governing body of an Indian tribe, as the case may be, may study, determine, comment on, and make recommendations with regard to the possible public health and safety, environmental, and economic impacts of any such repository;

(2) by which the Secretary may consider and respond to comments and recommendations made by such State or governing body of an Indian tribe, including the period in which the Secretary may so respond;

(3) by which the Secretary and such State or governing body of an Indian tribe may review or modify the agreement periodically;

(4) by which such State or governing body of an Indian tribe is to submit an impact report and request for impact assistance under section 116(b) or section 118(b), as the case may be; and

(5) for public notification of the procedures specified under paragraphs (1) through (4).

PARTICIPATION OF INDIAN TRIBES

SEC. 118. (a) PARTICIPATION OF INDIAN TRIBES IN REPOSITORY LICENSING DECISIONS.—Upon the submission by the President to the Congress of a recommendation of a site for a repository located on the reservation of an Indian tribe, the governing body of such Indian tribe may disapprove the site designation and submit to the Congress a notice of such disapproval. The governing body of such Indian tribe may submit such a notice of disapproval to the Congress not later than the 60 days after the date that the President recommends such site to the Congress under section 114. A notice of disapproval shall be considered to be submitted to the Congress on the date of the transmittal of such notice of disapproval to the Speaker of the House and the President pro tempore of the Senate. Such notice of disapproval shall be accompanied by a statement of reasons explaining why such governing body of such Indian tribe disapproved the recommended repository site involved.

(b) FINANCIAL ASSISTANCE.—(1)(A) The Secretary shall make grants to each Indian tribe on whose reservation a site for a repository is approved under section 112(c). Such grants may be made to each such Indian tribe only for purposes of enabling such Indian tribe—

(i) to review activities taken under this subtitle with respect to such site for purposes of determining any potential economic, social, public health and safety, and environmental impacts of such repository on the reservation and its residents;

(ii) to develop a request for impact assistance under paragraph (2);

(iii) to engage in any monitoring, testing, evaluation, or other research activities, with respect to site characterization programs with regard to such site;

(iv) to provide information to the residents of its reservation regarding any activities of such Indian tribe, the Secretary, or the Commission with respect to such site; and

(v) to request information from, and make comments and recommendations to, the Secretary regarding any activities taken under this subtitle with respect to such site.

(B)(i) The amount of funds provided to any Indian tribe under this paragraph in any fiscal year may not exceed 100 percent of the costs incurred by such Indian tribe with respect to the activities described in clauses (i) through (v) of subparagraph (A). Any salary or travel expense that would ordinarily be incurred by such Indian tribe may not be considered eligible for funding under this paragraph.

(ii) Each Indian tribe receiving a grant under this paragraph shall use, with respect to each fiscal year, not less than $100,000 of such grant for the activity described in subparagraph (A)(iv).

(2)(A) The Secretary shall provide financial and technical assistance to any Indian tribe requesting such assistance and on whose reservation there is a site with respect to which the Commission has authorized construction of a repository. Such assistance shall be designed to mitigate the impact on such Indian tribe of the development of such repository. Such assistance shall be provided to such Indian tribe as soon as practicable following granting by the Commission of a construction authorization for such repository and following the completion of judicial review of any action seeking to prohibit such construction.

(B)(i) Any Indian tribe desiring assistance under this paragraph shall prepare and submit to the Secretary a report on any economic, social, public health and safety, and environmental impacts that are likely as a result of the development of a repository at a site on the reservation of such Indian tribe. Such report shall be submitted to the Secretary following the completion of site characterization activities at such site and before the recommendation of such site to the President by the Secretary for application for a construction authorization for a repository.

(ii) The Secretary shall submit any request of an Indian tribe for impact assistance under this paragraph to the President and the Congress, together with the impact report prepared by such Indian tribe under clause (i) and an estimate prepared by the Secretary with respect to the total cost of implementing the impact assistance plan of such Indian tribe.

(3) The Secretary shall grant to each Indian tribe on whose reservation a site for a repository is approved under section 112(c) an amount each fiscal year equal to the amount such Indian tribe would receive were it authorized to tax site characterization activities at such site, and the development and operation of such repository, as such Indian tribe taxes the other industrial activities occurring on such reservation. Such grants shall continue until such time as all such activities, development, and operation are terminated at such site.

(4)(A) An Indian tribe may not receive any grant under paragraph (1) after the expiration of the one-year period following—

(i) the date on which the Secretary notifies such Indian tribe of the termination of site characterization activities at the site involved on the reservation of such Indian tribe;

(ii) the date on which such site is disapproved under section 115; or

(iii) the date on which the Commission disapproves an application for a construction authorization for a repository at such site;

whichever occurs first, unless there is another site on the reservation of such Indian tribe that is approved under section 112(c) and with respect to which the actions described in clauses (i), (ii), and (iii) have not been taken.

(B) At the end of the one-year period beginning on the effective date of any operating license for a repository at a site on the reservation of an Indian tribe, no Federal funds shall be made available under paragraph (1) or (2) to such Indian tribe, except for—

(i) such funds as may be necessary to support activities of such Indian tribe related to any other repository located on, or proposed to be located on, such reservation, and for which an operating license has not been in effect for more than one year; and

(ii) such funds as may be necessary to support activities of such Indian tribe pursuant to agreements or contracts for impact assistance entered into, under paragraph (2), by such Indian tribe with the Secretary before the end of such one-year period.

(5) Financial assistance authorized in this subsection shall be made out of amounts held in the Nuclear Waste Trust Fund established in section 124.

JUDICIAL REVIEW OF AGENCY ACTIONS

SEC. 119. (a) UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.—Except for review in the Supreme Court of the United States, the United States Court of Appeals for the District of Columbia, acting as a special court, shall have original and exclusive jurisdiction over any civil action—

(1) for review of any final decision or action of the Secretary, the President, or the Commission under this subtitle;

(2) alleging the failure of the Secretary, the President, or the Commission to make any decision, or take any action, required under this subtitle;

(3) challenging the constitutionality of any decision made, or action taken, under any provision of this subtitle; or

(4) for review of any environmental impact statement prepared pursuant to the National Environmental Policy Act with respect to any action under this subtitle, or alleging a failure to prepare such statement with respect to any such action.

(b) EXPEDITED DETERMINATION.—The United States Court of Appeals for the District of Columbia shall exercise its powers in such manner as to expedite the determination of cases over which it has jurisdiction under this section.

(c) DEADLINE FOR COMMENCING ACTION.—A civil action for judicial review described under subsection (a) may be brought not later than the 180th day after the date of the decision or action or failure to act involved, as the case may be, except that if a party shows that he did not know of the decision or action complained of (or of the failure to act), and that a reasonable person acting under the circumstances would not have known, such party may bring a civil action not later than the 180th day after the date such party acquired actual or constructive knowledge of such decision, action, or failure to act.

EXPEDITED AUTHORIZATIONS

SEC. 120. (a) ISSUANCE OF AUTHORIZATIONS.—To the extent that the taking of any action related to the site characterization of a site or the construction or initial operation of a repository under this subtitle requires a certificate, right-of-way, permit, lease, or other authorization from a Federal officer or agency, such officer or agency shall issue or grant any such authorization at the earliest practicable date, to the extent permitted by the applicable provisions of law administered by such officer or agency. All actions of a Federal officer or agency with respect to consideration of applications or requests for the issuance or grant of any such authorization shall be expedited, and any such application or request shall take precedence over any similar applications or requests not related to such repositories.

(b) TERMS OF AUTHORIZATIONS.—Any authorization issued or granted under subsection (a) shall include such terms and conditions as may be required by law, and may include terms and conditions permitted by law.

CERTAIN STANDARDS AND CRITERIA

SEC. 121. (a) ENVIRONMENTAL PROTECTION AGENCY STANDARDS.—Not later than one year after the date of the enactment of this Act, the Administrator, pursuant to authority under other provisions of law, shall, by rule, promulgate generally applicable standards for protection of the general environment from radioactive material in repositories.

(b) COMMISSION REQUIREMENTS AND CRITERIA.—(1)(A) The Commission, pursuant to authority under other provisions of law, shall, by rule, promulgate technical requirements and criteria that it will apply, under the Atomic Energy Act of 1954 (42

U.S.C. 2011 et seq.) and the Energy Reorganization Act of 1974 (42 U.S.C. 5801 et seq.), in approving or disapproving—

(i) applications for authorization to construct repositories;

(ii) applications for licenses to receive and possess spent nuclear fuel and high-level radioactive waste in such repositories; and

(iii) applications for authorization for closure and decommissioning of such repositories.

(B) Such requirements and criteria shall not be inconsistent with any comparable standards promulgated by the Administrator under subsection (a).

(2) For purposes of this Act, nothing in this section shall be construed to prohibit the Commission from promulgating requirements and criteria under paragraph (1) before the Administrator promulgates standards under subsection (a). If the Administrator promulgates standards under subsection (a) after requirements and criteria are promulgated by the Commission under paragraph (1), such requirements and criteria shall be revised by the Commission if necessary to comply with paragraph (1)(B).

(c) ENVIRONMENTAL IMPACT STATEMENT.—The promulgation of standards or criteria in accordance with the provisions of this section shall not be considered a major Federal action under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), or be considered to require the preparation of any environmental impact statement under subparagraph (E) or (F) of section 102(2) of such Act.

DISPOSAL OF SPENT NUCLEAR FUEL

SEC. 122. Notwithstanding any other provision of this subtitle, any repository constructed on a site approved under this subtitle shall be designed and constructed to permit the retrieval of any spent nuclear fuel placed in such repository, during an appropriate period of operation of the facility, for any reason pertaining to the public health or safety, or the environment, or for the purpose of permitting the recovery of the economically valuable contents of such spent fuel. The Secretary shall specify the appropriate period of retrievability with respect to any repository at the time of design of such repository, and such aspect of such repository shall be subject to approval or disapproval by the Commission as part of the construction authorization process under subsection (b) through subsection (d) of section 114.

ACCOUNTING OF EXPENDITURES

SEC. 123. The Secretary shall maintain adequate records of all expenditures made under this subtitle, which, together with expenditures made by the United States under other laws in connection with the management and disposal of high-level radioactive waste and spent nuclear fuel, shall provide the basis for any fees to be assessed as described under section 124.

NUCLEAR WASTE TRUST FUND

SEC. 124. (a) CONTRACTS.—(1) In the performance of his functions under this Act, the Secretary is authorized to enter into contracts with any person who generates or holds title to high-level radioactive waste or spent nuclear fuel for the disposal of such waste or spent fuel. Such contracts shall provide for payment to the Secretary of a fee sufficient to offset expenditures described in subsection (d).

(2) The Secretary shall undertake a study and, not later than 180 days after the date of the enactment of this Act, submit to the Congress a report, establishing payment charges per unit of spent nuclear fuel or high-level radioactive waste, determined pursuant to paragraph (3), which shall be calculated on an annual basis, commencing July 30, 1983. Such payment charges and the calculation thereof shall be published in the Federal Register, and shall become effective not less than 30 days after publication. Each payment charge published in the Federal Register under this paragraph shall remain effective for a period of 12 months from the effective date as the charge for the costs of disposal or deposit of any spent nuclear fuel or high-level radioactive waste. The report of the Secretary shall specify the method and manner of collection (including the rates and manner of payment), an estimate of the total payments necessary to cover the full amount of such costs, and any legislative recommendations determined by the Secretary to be appropriate.

(3) The Secretary shall require each person entering into a contract for disposal under this section to make payments at such levels as will ensure that such person will be required to pay a ratable portion of the costs of radioactive waste disposal activities under this subtitle, including the activities described in paragraphs (1)

through (5) of subsection (d). The Secretary shall also require any other person desiring to dispose of high-level radioactive waste or spent nuclear fuel in a repository developed under this Act to pay a ratable portion of such costs. Payment schedules for such ratable portions shall be determined as follows:

(A) with respect to fuel assemblies placed into reactors after July 30, 1983, the Secretary shall establish a fee schedule requiring full predisposal payment to be made in equitable installments over the time that such fuel assembly is in the reactor core;

(B) with respect to fuel assemblies placed into reactors before July 30, 1983, the Secretary shall establish an equitable schedule of payments to be made over a 10-year period commencing July 30, 1983;

(C) with respect to high-level radioactive waste, the Secretary shall establish an equitable fee schedule requiring payments to be made over a 10-year period commencing at the time the generator or owner of such waste has entered into a contract with the Secretary under this section; and

(D) with respect to high-level radioactive waste or spent nuclear fuel described in subsection (b)(2), or any other high-level radioactive waste or spent nuclear fuel to be disposed of in a repository for which no contracts are entered into under this section, the Secretary shall establish a fee schedule providing for full payment of the appropriate ratable portion prior to disposal of such waste or spent fuel.

(4) Contracts entered into under this section shall provide that—

(A) following commencement of operation of a repository, the Secretary shall take title to the high-level radioactive waste or spent nuclear fuel involved as expeditiously as practicable upon the request of the generator or owner of such waste or spent fuel; and

(B) in return for the payment of fees established by this section, the Secretary, beginning not later than January 1998, will dispose of the high-level radioactive waste or civilian spent nuclear fuel involved as provided in this subtitle.

(5) The Secretary shall establish in writing criteria setting forth the terms and conditions under which such disposal services shall be made available.

(6) The Secretary shall commence collection of fees under contracts entered into under this section as soon as is practicable.

(b) ADVANCE CONTRACTING REQUIREMENT.—(1)(A) The Commission shall not issue or renew a license to any person to use a utilization or production facility under the authority of section 53, 103, or 104 of the Atomic Energy Act of 1954 (42 U.S.C. 2071, 2133, 2134) unless—

(i) such person has entered into a contract with the Secretary under this section; or

(ii) the Secretary affirms in writing that such person is actively and in good faith negotiating with the Secretary for a contract under this section.

(B) The Commission, as it deems necessary or appropriate, may require as a precondition to the issuance or renewal of a license under section 53, 103, or 104 of the Atomic Energy Act of 1954 (42 U.S.C. 2071, 2133, 2134) that the applicant for such license shall have entered into an agreement with the Secretary for the disposal of high-level radioactive waste and spent nuclear fuel that may result from the use of such license.

(2) Except as provided in paragraph (1), no spent nuclear fuel or high-level radioactive waste generated or owned by any person (other than a department of the United States referred to in section 101 or 102 of title 5, United States Code) may be disposed of by the Secretary in any repository constructed under this Act unless the generator or owner of such spent fuel or waste has entered into a contract with the Secretary under this section by not later than—

(A) June 30, 1983; or

(B) the date on which the generator or owner commences generation of, or takes title to, such spent fuel or waste;

whichever occurs later.

(3) The rights and duties of a contract entered into under this section may be assignable with transfer of title to the spent nuclear fuel or high-level radioactive waste involved.

(4) No spent nuclear fuel or high-level radioactive waste generated or owned by any department of the United States referred to in section 101 or 102 of title 5, United States Code (other than the Department of Energy) may be disposed of by the Secretary in any repository constructed under this Act unless such department transfers to the Secretary amounts equivalent to the fees that would be paid to the Secretary under the contracts referred to in this section if such waste or spent fuel were generated by any other person.

(c) ESTABLISHMENT OF NUCLEAR WASTE TRUST FUND.—There hereby is established in the Treasury of the United States a separate trust fund, to be known as the Nuclear Waste Trust Fund. The Fund shall consist of—

(1) all receipts, proceeds, and recoveries realized by the Secretary under subsections (a) and (e), which shall be deposited in the Fund immediately upon their realization;

(2) any appropriations made by the Congress to the Fund; and

(3) any unexpended balances available on the date of the enactment of this Act for functions or activities necessary or incident to the disposal of high-level radioactive waste or civilian spent nuclear fuel, which shall automatically be transferred to the Fund on such date.

(d) USE OF FUND.—The Secretary may make expenditures from the Fund, subject to subsection (e), only for purposes of radioactive waste disposal activities under this subtitle, including—

(1) the identification, development, licensing, construction, operation, decommissioning, and post-decommissioning maintenance and monitoring of any repository constructed under this subtitle;

(2) the administrative cost of the radioactive waste disposal program;

(3) any costs that may be incurred by the Secretary in connection with the treating or packaging of spent nuclear fuel or high-level radioactive waste to be disposed of in a repository;

(4) the costs associated with acquisition, design, modification, replacement, operation, and construction of facilities at a repository site and necessary or incident to such repository; and

(5) the provision of assistance to States and Indian tribes under sections 116 and 118.

No amount may be expended by the Secretary under this subtitle for the construction or expansion of any facility unless such construction or expansion is expressly authorized by this or subsequent legislation. The Secretary hereby is authorized to construct at least one repository.

(e) ADMINISTRATION OF FUND.—(1) The Secretary of the Treasury shall hold the Fund and, after consultation with the Secretary, annually report to the Congress on the financial condition and operations of the Fund during the preceding fiscal year.

(2) The Secretary shall submit the budget of the Fund to the Office of Management and Budget triennially along with the budget of the Department of Energy submitted at such time in accordance with the Budget and Accounting Act, 1921 (31 U.S.C. 1 et seq.). The budget of the Fund shall consist of the estimates made by the Secretary of expenditures from the Fund and other relevant financial matters for the 3 succeeding fiscal years, and shall be included in the Budget of the United States Government as submitted by the Secretary. The Secretary may make expenditures, subject to appropriations which shall remain available until expended. Appropriations shall be subject to triennial authorization.

(3) If the Secretary determines that the Fund contains at any time amounts in excess of current needs, the Secretary may request the Secretary of the Treasury to invest such amounts, or any portion of such amounts as the Secretary determines to be appropriate, in obligations of the United States—

(A) having maturities determined by the Secretary of the Treasury to be appropriate to the needs of the Fund; and

(B) bearing interest at rates determined to be appropriate by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the maturities of such investments, except that the interest rate on such investments shall not exceed the average interest rate applicable to existing borrowings.

(4) Receipts, proceeds, and recoveries realized by the Secretary under this section, and expenditures of amounts from the Fund, shall be exempt from annual apportionment under the provisions of section 3679 of the Revised Statutes (31 U.S.C. 665).

(5) If at any time the moneys available in the Fund are insufficient to enable the Secretary to discharge his responsibilities under this subtitle, the Secretary shall issue to the Secretary of the Treasury obligations in forms and denominations, bearing maturities, and subject to terms and conditions, as may be agreed to by the Secretary and the Secretary of the Treasury. The total obligations shall not exceed amounts provided in appropriation Acts. Redemption of the notes or obligations shall be made by the Secretary from moneys available in the Fund. The obligations shall bear interest at a rate determined by the Secretary of the Treasury, which shall be not less than a rate determined by taking into consideration the average

market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the obligations. The Secretary of the Treasury shall purchase any issued obligations and for that purpose he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act (31 U.S.C. 752 et seq.) and the purpose for which securities may be issued under such Act are extended to include any purchase of the obligations. The Secretary of the Treasury may at any time sell any of the obligations acquired by him under this paragraph. All redemptions, purchases, and sales by the Secretary of the Treasury of the notes of other obligations shall be treated as public debt transactions of the United States.

(6) Any appropriations made available to the Fund for any purpose described in subsection (d) shall be repaid into the general fund of the Treasury, together with interest from the date of availability of the appropriations until the date of repayment. The interest shall be paid on the cumulative amount of appropriations available to the account, less the average undisbursed cash balance in the account during the year. The rate of interest shall be determined by the Secretary of the Treasury taking into consideration the average market yield during the month preceding each fiscal year on outstanding marketable obligations of the United States of comparable maturity. Interest payments may be deferred with the approval of the Secretary of the Treasury, but any interest payments so deferred shall themselves bear interest.

TITLE TO MATERIAL

Sec. 125. Delivery, and acceptance by the Secretary, of any high-level radioactive waste or spent nuclear fuel at a repository constructed under this subtitle shall constitute a transfer to the Secretary of title to such waste or spent fuel.

TERMINATION OF CERTAIN PROVISIONS

Sec. 126. Sections 119 and 120 shall cease to have effect at such time as the Secretary commences licensed operation of at least one repository.

Subtitle B—Interim Storage Program

AVAILABLE CAPACITY FOR INTERIM STORAGE OF SPENT NUCLEAR FUEL

Sec. 131. The Secretary, the Commission, and other authorized Federal officials shall each take such actions as such official considers necessary to encourage and expedite the use of available storage at the site of each civilian nuclear power reactor consistent with—

(1) the protection of the public health and safety, and the environment;
(2) economic considerations;
(3) continued operation of such reactor; and
(4) any applicable provisions of law.

INTERIM AT-REACTOR STORAGE

Sec. 132. (a) Commercialization Program.—The Secretary, in consultation with the Commission, shall establish a commercialization program to assist and encourage the development by the private sector of alternate technologies for the storage of civilian spent nuclear fuel at the sites of civilian nuclear power reactors, with the objective of establishing one or more alternate technologies that can be licensed by the Commission, to the maximum extent practicable, on a generic basis for use at the sites of all nuclear power reactors without the need for additional site-specific approvals by the Commission. For the purposes of this subsection, "alternate technologies" shall include, but are not limited to, civilian spent nuclear fuel storage casks.

(b) Standards for Generic Licensing of Technologies.—The Commission shall, by rule, develop procedures and standards for the licensing on a generic basis of technologies for use at the sites of all civilian nuclear power reactors without the need for additional site-specific approvals by the Commission. The development of such procedures and standards shall not preclude the licensing, under any applicable procedures or rules of the Commission in effect prior to such development, of any technology for the storage of civilian spent nuclear fuel at the site of any civilian nuclear power reactor.

(c) Licensing of Facility Expansions and Transshipments.—In the case of a facility for the storage of civilian spent nuclear fuel from a civilian nuclear power reactor that is located at the site of such reactor, or a pool for such storage that is an integral part of a civilian nuclear power reactor, in issuing or amending any license or authorization under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) for the expansion of the capacity of such facility, for the transshipment of spent nuclear fuel to or from another nuclear power reactor, or for the addition or construction of any new storage capacity or facility, the Commission shall not consider—

(1) any issue relating to the availability or desirability of any alternative away-from-reactor storage sites;

(2) any issue relating to the need for the power generated by the reactor involved;

(3) any issue relating to a claim that additional storage of civilian spent nuclear fuel at such facility or pool establishes such facility as a repository;

(4) any issue relating to the design, construction, or operation of any nuclear power reactor already licensed to operate at such site, or any nuclear power reactor for which a construction permit has been granted at such site, unless the Commission determines that any such issue substantially affects the design, construction, or operation of the facility or activity for which such license application, authorization, or amendment is being considered; or

(5) any siting or design issue fully considered and decided by the Commission in connection with the issuance of a construction permit or operating license for a nuclear power reactor at such site.

For purposes of judicial review, the issuance or amendment of any license or authorization for such a facility shall be treated as valid if the issuance or amendment meets all applicable requirements of law other than any requirement regarding the consideration of an issue referred to in paragraphs (1) through (5). This subsection shall apply only with respect to licenses, authorizations, or amendments to licenses or authorizations, applied for under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) before December 31, 2005.

STORAGE OF SPENT NUCLEAR FUEL

Sec. 133. (a) Storage Capacity.—(1) The Secretary shall provide not more than 1,700 metric tons of capacity for the storage of spent nuclear fuel from civilian nuclear power reactors. Such storage capacity may be provided only through the following methods, used in any combination determined by the Secretary to be appropriate:

(A) use of available capacity at any facility owned by the Federal Government on the date of the enactment of this Act, including the modification and expansion of any such facility, if the Commission determines that such use will adequately protect the public health and safety, and the environment, except that such use shall not—

(i) render such facility subject to licensing under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.), unless such licensing is otherwise required; or

(ii) be considered a major Federal action requiring preparation of an environmental impact statement within the meaning of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), if such facility is already being used, or has previously been used, for such storage or for any similar purpose;

(B) acquisition of any modular or mobile spent nuclear fuel storage equipment, including spent nuclear fuel storage casks, and provision of such equipment, to any person generating or holding title to spent nuclear fuel, at the site of any nuclear power reactor operated by such person or at any Federal site;

(C) construction of storage capacity at any site with respect to which an application for a construction authorization for a repository is submitted under section 114(b) and approved by the Commission; and

(D) construction of storage capacity at any site of a civilian nuclear power reactor.

(2) In selecting methods of providing storage capacity under paragraph (1), the Secretary shall consider the timeliness of the availability of each such method and shall seek to minimize the transportation of spent nuclear fuel, the public health and safety impacts, and the costs of providing such storage capacity.

(3) In providing storage capacity through any method described in paragraph (1), the Secretary shall comply with any applicable requirements for licensing or authorization of such method, except as provided in paragraph (1)(A)(i).

(4) The Secretary shall ensure that storage capacity is available under paragraph (1) when needed, as determined on the basis of the storage needs specified in con-

tracts entered into under section 138(a), and shall accept upon request any spent nuclear fuel as covered under such contracts.

(b) CONTRACTS.—Subject to the capacity limitation established in subsection (a)(1), the Secretary may enter into contracts under section 138(a) with any person generating or holding title to spent nuclear fuel for purposes of providing storage capacity for such spent fuel under this section only if the Secretary determines that—

(1) adequate storage capacity is unavailable at the site of the nuclear power reactor at which such spent fuel is generated, or at the site of any other nuclear power reactor operated by such person, and such capacity cannot be made available in a timely manner through any method described in paragraph (2); and

(2) such person is diligently pursuing alternatives to the use of Federal storage capacity for the storage of spent nuclear fuel expected to be generated by such person in the future, including—

(A) expansion of storage facilities at the site of any nuclear power reactor;

(B) construction of new or additional storage facilities at the site of any nuclear power reactor;

(C) acquisition of modular or mobile spent nuclear fuel storage equipment, including spent nuclear fuel storage casks, for use at the site of any nuclear power reactor;

(D) purchase, lease, or other acquisition of any non-Federal storage facility located away from the site of any nuclear power reactor; and

(E) transshipment to another nuclear power reactor owned by such person.

(c) FOREIGN SPENT NUCLEAR FUEL.—Notwithstanding the capacity limitation established in subsection (a)(1), the Secretary may provide additional storage capacity not to exceed 100 metric tons under this section for any foreign spent nuclear fuel that the United States is required to accept pursuant to international arrangements relating to the nonproliferation of nuclear weapons. The provisions of subsection (b) shall not apply with respect to such storage.

(d) LIMITATIONS.—(1) For purposes of providing storage capacity under subsection (a), the Secretary may not purchase, lease, or otherwise acquire any commercial facility designed or intended to be used for the reprocessing of spent nuclear fuel for extraction of uranium or plutonium.

(2) Any spent nuclear fuel stored under this section shall be removed from the storage site or facility involved as soon as practicable following the date on which a repository developed under this Act is available for disposal of such spent fuel.

(e) REPORT.—The Secretary shall annually prepare and submit to the Congress a report on any plans of the Secretary for providing storage capacity under this section. Such report shall include a description of the specific manner of providing such storage selected by the Secretary, if any. The Secretary shall prepare and submit the first such report not later than one year after the date of the enactment of this Act.

MONITORED RETRIEVABLE STORAGE

SEC. 134. (a) FINDINGS.—The Congress finds that—

(1) the Federal Government has the responsibility to provide for long-term storage of high-level radioactive waste and spent nuclear fuel;

(2) the executive branch and the Congress should proceed as expedititously as possible to consider fully a proposal for construction of one or more monitored retrievable storage facilities to provide such long-term storage;

(3) the Federal Government has the responsibility to ensure that such facilities are available with sufficient capacity when needed; and

(4) disposal of high-level radioactive waste and spent nuclear fuel in a repository developed under this Act should proceed regardless of any construction of a monitored retrievable storage facility pursuant to this section.

(b) SUBMISSION OF PROPOSAL BY SECRETARY.—(1) Not later than one year after the date of the enactment of this Act, the Secretary shall submit to the Congress a proposal for the construction of one or more monitored retrievable storage facilities for high-level radioactive waste and spent nuclear fuel. Each such facility shall be designed—

(A) to accommodate spent nuclear fuel and high-level radioactive waste resulting from civilian nuclear activities;

(B) to permit continuous monitoring, management, and maintenance of such spent fuel and waste for the foreseeable future;

(C) to provide for the ready retrieval of such spent fuel and waste for further processing or disposal; and

(D) to safely store such spent fuel and waste as long as may be necessary by maintaining such facility through appropriate means, including any required replacement of such facility.

(2) Such proposal shall include—

(A) the establishment of a Federal program for the siting, development, construction, and operation of facilities capable of safely storing high-level radioactive waste and spent nuclear fuel, which facilities are to be licensed by the Commission;

(B) site-specific designs, specifications, and cost estimates sufficient to (i) solicit bids for the construction of the first such facility; (ii) support congressional authorization of the construction of such facility; and (iii) enable completion and operation of such facility as soon as practicable following congressional authorization of such facility; and

(C) a plan for integrating facilities constructed pursuant to this section with other storage and disposal facilities authorized in this Act.

(3) In formulating such proposal, the Secretary shall consult with the Commission and the Administrator, and shall submit their comments on such proposal to the Congress at the time such proposal is submitted.

(c) ENVIRONMENTAL IMPACT STATEMENTS.—(1) Preparation and submission to the Congress of the proposal required in this section shall not be considered a major Federal action under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Secretary shall prepare, in accordance with regulations issued by the Secretary implementing such Act, an environmental assessment with respect to such proposal. Such environmental assessment shall be based upon available information regarding alternative technologies for the storage of spent nuclear fuel and high-level radioactive waste. The Secretary shall submit such environmental assessment to the Congress at the time such report is submitted.

(2) Following authorization by the Congress of construction of a facility described in subsection (b), the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) shall apply with respect to construction of such facility, except that any environmental impact statement prepared with respect to such facility shall not be required to consider the need for such facility, alternative sites for such facility, or any alternative to the design criteria for such facility set forth in subsection (b)(1).

(d) LICENSING.—Any facility authorized pursuant to this section shall be subject to licensing under section 202(3) of the Energy Reorganization Act of 1974 (42 U.S.C. 5842(3)). In reviewing the application filed by the Secretary for licensing of the first such facility, the Commission may not consider the need for such facility, alternate sites for such facility, or any alternative to the design criteria for such facility set forth in subsection (b)(1).

(e) IMPACT ASSISTANCE.—(1) Upon receipt by the Secretary of congressional authorization to construct a facility described in subsection (b), the Secretary shall commence making annual impact aid payments to appropriate units of general local government in order to mitigate any social or economic impacts resulting from the construction and subsequent operation of any such facility within the jurisdictional boundaries of any such unit.

(2) Payments made available to units of general local government under this subsection shall be—

(A) allocated in a fair and equitable manner, with priority given to units of general local government determined by the Secretary to be most severely affected; and

(B) utilized by units of general local government only for planning, construction, maintenance, and provision of public services related to the siting of such facility.

(3) Such payments shall be subject to such terms and conditions as the Secretary determines are necessary to ensure achievement of the purposes of this subsection. The Secretary shall issue such regulations as may be necessary to carry out the provisions of this subsection.

(4) Such payments shall be made available entirely from funds held in the Interim Storage Trust Fund established in section 138 and shall be available only to the extent provided in advance in appropriations Acts.

(5) The Secretary may consult with appropriate units of general local government in advance of commencement of construction of any such facility in an effort to determine the level of payments each such unit is eligible to receive under this subsection.

(6) For purposes of this subsection, the term "unit of general local government" means any borough, city, county, parish, town, township, village, or other general purpose political subdivision of a State.

STORAGE OF TRANSURANIC WASTE

SEC. 135. (a) STORAGE FACILITIES.—The Secretary shall make available facilities, owned by the Federal Government on the date of the enactment of this Act, for the storage of transuranic waste, regardless of concentration, from decommissioning and decontamination of civilian nuclear facilities (except utilization facilities) and from civilian fuel research and development programs. The Secretary shall charge reasonable fees to cover the cost of such storage. Acceptance of transuranic waste under this section shall not render any Federal facility subject to licensing under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.), unless such licensing is otherwise required, and shall not be deemed a major Federal action requiring preparation of an environmental impact statement within the meaning of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(b) CONTRACTS.—Before accepting any transuranic waste for storage in a facility under this section, the Secretary shall require the person who generated or holds title to such waste to enter into a contract under section 138(a) providing that, as soon as practicable following the date on which a repository or other disposal facility is available for disposal of such waste, such person shall remove such waste and dispose of it in such repository or other disposal facility.

(c) SCHEDULE.—The Secretary shall cease accepting transuranic waste for storage in a facility under this section beginning—

(1) on the date on which a repository or other disposal facility is available for disposal of such waste; or

(2) 6 years after the date on which the Commission issues final regulations pursuant to subsection (d) with respect to the licensing of facilities primarily for the disposal of transuranic waste;

whichever date occurs sooner.

(d) DISPOSAL LICENSING.—Not later than 2 years after the date of the enactment of this Act, the Administrator shall issue standards and the Commission shall issue final regulations, in accordance with the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.), establishing criteria for the licensing of facilities for the disposal of civilian transuranic waste.

TITLE TO STORED MATERIAL

SEC. 136. In carrying out the provisions of this subtitle, the Secretary may not accept title to any spent nuclear fuel, high-level radioactive waste, or transuranic waste. Acceptance by the Secretary of any such spent fuel or waste for storage under this subtitle shall not constitute a transfer to the Secretary of title to such spent fuel or waste.

ACCOUNTING OF EXPENDITURES

SEC. 137. The Secretary shall maintain adequate records of all expenditures made under this subtitle, which, together with expenditures made by the United States under other laws in connection with the management and storage of transuranic waste and spent nuclear fuel from civilian nuclear activities, shall provide the basis for any fees to be assessed as described under section 138.

INTERIM STORAGE TRUST FUND

SEC. 138. (a) CONTRACTS.—(1) During the one-year period following the date of the enactment of this Act, the Secretary is authorized to enter into contracts with persons who generate or hold title to transuranic waste or spent nuclear fuel resulting from civilian nuclear activities for the storage of such waste or spent fuel in any storage capacity provided under this subtitle. The Secretary may, without regard to such one-year period, enter into contracts for the storage of high-level radioactive waste or spent nuclear fuel in any monitored retrievable storage facility constructed pursuant to section 134. Each such contract shall (A) provide for payment to the Secretary of fees determined in accordance with the provisions of this section; and (B) specify the amount of storage capacity to be provided for the person involved.

(2) Upon the expiration of such one-year period, the Secretary shall compute the total storage capacity to be provided as a result of the contracts entered into during such period and the estimated requirements for the storage of foreign spent nuclear fuel.

(3) The Secretary shall undertake a study and, not later than 180 days after the date of the enactment of this Act, submit to the Congress a report, establishing payment charges that shall be calculated on an annual basis, commencing on or before January 1, 1984. Such payment charges and the calculation thereof shall be published in the Federal Register, and shall become effective not less than 30 days after publication. Each payment charge published in the Federal Register under this paragraph shall remain effective for a period of 12 months from the effective date as the charge for the cost of the interim storage of any spent nuclear fuel or transuranic waste resulting from civilian nuclear activities. The report of the Secretary shall specify the method and manner of collection (including the rates and manner of payment) and any legislative recommendations determined by the Secretary to be appropriate.

(4) Fees for storage under this subtitle shall be established on a nondiscriminatory basis. The fees to be paid by each person entering into a contract with the Secretary under this subsection shall be based upon an estimate of the pro rata costs of storage and related activites under this subtitle with respect to such person, including the acquisition, construction, operation, and maintenance of any facilities under this subtitle.

(5) The Secretary shall establish in writing criteria setting forth the terms and conditions under which such storage services shall be made available.

(6) The Secretary shall commence collection of fees under contracts entered into under this section as soon as is practicable.

(b) LIMITATION.—No spent nuclear fuel or transuranic waste generated or owned by any department of the United States referred to in section 101 or 102 of title 5, United States Code (other than the Department of Energy) may be stored by the Secretary in any storage capacity provided under this subtitle unless such department transfers to the Secretary amounts equivalent to the fees that would be paid to the Secretary under the contracts referred to in this section if such spent fuel or waste were generated by any other person.

(c) ESTABLISHMENT OF INTERIM STORAGE TRUST FUND.—There hereby is established in the Treasury of the United States a separate trust fund, to be known as the Interim Storage Trust Fund. The Storage Fund shall consist of—

(1) all receipts, proceeds, and recoveries realized by the Secretary under subsections (a) and (e), which shall be deposited in the Storage Fund immediately upon their realization;

(2) any appropriations made by the Congress to the Storage Fund; and

(3) any unexpended balances available on the date of the enactment of this Act for functions or activities necessary or incident to the interim storage of spent nuclear fuel or transuranic waste, which shall automatically be transferred to the Storage Fund on such date.

(d) USE OF STORAGE FUND.—The Secretary may make expenditures from the Storage Fund, subject to subsection (e), for any purpose necessary or appropriate to the conduct of the functions and activities of the Secretary, or the provision or anticipated provision of services, under this subtitle, including—

(1) the identification, development, licensing, construction, operation, decommissioning, and post-decommissioning maintenance and monitoring of any interim storage facility provided under this subtitle;

(2) the administrative cost of the interim storage program; and

(3) the costs associated with acquisition, design, modification, replacement, operation, and construction of facilities at an interim storage site.

(e) ADMINISTRATION OF STORAGE FUND.—(1) The Secretary of the Treasury shall hold the Storage Fund and, after consultation with the Secretary, annually report to the Congress on the financial condition and operations of the Storage Fund during the preceding fiscal year.

(2) The Secretary shall submit the budget of the Storage Fund to the Office of Management and Budget triennially along with the budget of the Department of Energy submitted at such time in accordance with the Budget and Accounting Act, 1921 (31 U.S.C. 1 et seq.). The budget of the Storage Fund shall consist of estimates made by the Secretary of expenditures from the Storage Fund and other relevant financial matters for the 3 succeeding fiscal years, and shall be included in the Budget of the United States Government as submitted by the Secretary. The Secretary may make expenditures, subject to appropriations which shall remain available until expended. Appropriations shall be subject to triennial authorization.

(3) If the Secretary determines that the Storage Fund contains at any time amounts in excess of current needs, the Secretary may request the Secretary of the Treasury to invest such amounts, or any portion of such amounts as the Secretary determines to be appropriate, in obligations of the United States—

(A) having maturities determined by the Secretary of the Treasury to be appropriate to the needs of the Storage Fund; and

(B) bearing interest at rates determined to be appropriate by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the maturities of such investments, except that the interest rate on such investments shall not exceed the average interest rate applicable to existing borrowings.

(4) Receipts, proceeds, and recoveries realized by the Secretary under this section, and expenditures of amounts from the Storage Fund, shall be exempt from annual apportionment under the provisions of section 3679 of the Revised Statutes (31 U.S.C. 665).

(5) If any any time the moneys available in the Storage Fund are insufficient to enable the Secretary to discharge his responsibilities under this subtitle, the Secretary shall issue to the Secretary of the Treasury obligations in forms and denominations, bearing maturities, and subject to terms and conditions, as may be agreed to by the Secretary and the Secretary of the Treasury. The total obligations shall not exceed amounts provided in appropriation Acts. Redemption of the notes or obligations shall be made by the Secretary from moneys available in the Storage Fund. The obligations shall bear interest at a rate determined by the Secretary of the Treasury, which shall be not less than a rate determined by taking into consideration the average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the obligations. The Secretary of the Treasury shall purchase any issued obligations and for that purpose he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act (31 U.S.C. 752 et seq.) and the purpose for which securities may be issued under such Act are extended to include any purchase of the obligations. The Secretary of the Treasury may at any time sell any of the obligations acquired by him under this paragraph. All redemptions, purchases, and sales by the Secretary of the Treasury of the notes of other obligations shall be treated as public debt transactions of the United States.

(6) Any appropriations made available to the Storage Fund shall be repaid into the general fund of the Treasury, together with interest from the date of availability of the appropriations until the date of repayment. The interest shall be paid on the cumulative amount of appropriations available to the account, less the average undisbursed cash balance in the account during the year. The rate of interest shall be determined by the Secretary of the Treasury taking into consideration the average market yield during the month preceding each fiscal year on outstanding marketable obligations of the United States of comparable maturity. Interest payments may be deferred with the approval of the Secretary of the Treasury, but any interest payments so deferred shall themselves bear interest.

TITLE II—OTHER PROVISIONS RELATING TO RADIOACTIVE WASTE

Subtitle A—Use of Certain Material for Nuclear Explosive Purposes

USE OF SPECIAL NUCLEAR MATERIAL

SEC. 201. Special nuclear material, as defined in section 11 aa. of the Atomic Energy Act of 1954 (42 U.S.C. 2014(aa)), produced in facilities licensed under section 103 or 104 of such Act, may not be transferred, reprocessed, used, or otherwise made available by any instrumentality of the United States or any other person for nuclear explosive purposes. This section shall not apply to special nuclear material exports covered by other applicable provisions of law. Any violation of the prohibition established in this section shall be enforceable in the same manner as a violation of section 57 of the Atomic Energy Act of 1954 (42 U.S.C. 2077).

Subtitle B—Alternative Means of Financing

STUDY

SEC. 211. The Secretary shall undertake a study with respect to alternative approaches to managing the construction and operation of all civilian radioactive waste management facilities, including the feasibility of establishing a private corporation for such purposes. In conducting such study, the Secretary shall consult with the Director of the Office of Management and Budget, the Chairman of the Commission, and such other Federal agency representatives as may be appropriate. Such study shall be completed, and a report containing the results of such study shall be submitted to the Congress, within one year after the date of the enactment of this Act.

Subtitle C—Low-Level Radioactive Waste

FINANCIAL ARRANGEMENTS FOR SITE CLOSURE

SEC. 221. (a) **FINANCIAL ARRANGEMENTS.**—(1) The Commission shall establish by rule, regulation, or order, after public notice, and in accordance with section 181 of the Atomic Energy Act of 1954 (42 U.S.C. 2231), such standards and instructions as the Commission may deem necessary or desirable to ensure in the case of each license for the disposal of low-level radioactive waste that an adequate bond, surety, or other financial arrangement (as determined by the Commission) will be provided by a licensee to permit completion of all requirements established by the Commission for the decontamination, decommissioning, site closure and reclamation of sites, structures, and equipment used in conjunction with such low-level radioactive waste. Such financial arrangements shall be provided and approved by the Commission prior to issuance of licenses for low-level radioactive waste disposal or, in the case of licenses in effect upon enactment of this section, prior to termination of such licenses.

(2) If the Commission determines that any long-term maintenance or monitoring, or both, will be necessary at a site, the Commission shall ensure before termination of the license that the licensee has made available such bonding, surety, or other financial arrangements as may be necessary to ensure that any necessary long-term maintenance or monitoring needed for such site will be carried out by the person having title and custody for such site following license termination.

(b) **TITLE AND CUSTODY.**—(1) The Secretary shall have authority to assume title and custody of low-level radioactive waste and the land on which such waste is disposed of, upon request of the owner of such waste and land, following termination of the license issued by the Commission for such disposal, provided that the Commission has determined that—

(A) the requirements of the Commission for site closure, decommissioning, and decontamination have been met by the licensee involved and that such licensee is in compliance with subsection (a);

(B) such title and custody will be transferred to the Secretary without cost to the Federal Government; and

(C) Federal ownership and management of such site is necessary or desirable in order to protect the public health and safety, and the environment.

(2) If the Secretary assumes title and custody of any such waste and land under this section, the Secretary shall maintain such waste and land in a manner that will protect the public health and safety, and the environment.

NONCOMMERCIAL DISPOSAL SITES

SEC. 222. (a) **IN GENERAL.**—The Secretary may assume title and custody of any site contaminated by low-level radioactive waste generated by, or resulting from, any activity of the Atomic Energy Commission or the Manhattan Engineering District, if removal from such site of such waste, and any material on such site contaminated by such waste, is not practicable.

(b) **FINANCIAL ARRANGEMENTS.**—(1) The Commission shall establish by rule, regulation, or order, after public notice, and in accordance with section 181 of the Atomic Energy Act of 1954 (42 U.S.C. 2231), such standards and instructions as the Commission may determine are necessary or desirable to ensure, with respect to any site in which title and custody are to be assumed by the Secretary under subsection (a), that an adequate bond, surety, or other financial arrangement (as determined by the Commission) will be provided by the owner of such site to permit—

(A) completion of all requirements established by the Commission for the decontamination and stabilization of such site; and

(B) the long-term maintenance and monitoring of such site by the Secretary.

(2) Such financial arrangements shall be provided and approved by the Commission prior to assumption of title and custody to such site by the Secretary.

(c) **TITLE AND CUSTODY.**—(1) The Secretary shall, upon request of the owner of such site, assume title and custody of such site, provided that the Commission has determined that—

(A) such owner has complied with the requirements of the Commission for decontamination and stabilization of such site;

(B) such owner is in compliance with subsection (b);

(C) such site cannot be released for unrestricted use; and

(D) such title and custody will be transferred to the Secretary without cost to the Federal Government.

(2) If the Secretary assumes title and custody of any site under this section, the Secretary shall maintain such site in a manner that will protect the public health and safety, and the environment.

Subtitle D—Office of Radioactive Waste Management

ESTABLISHMENT

SEC. 231. (a) OFFICE AND DIRECTOR.—There hereby is established within the Department of Energy an Office of Radioactive Waste Management. The Office shall be headed by a Director, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be compensated at the rate payable for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

(b) FUNCTIONS OF DIRECTOR.—The Director of the Office shall be responsible for carrying out the functions of the Secretary under this Act, subject to the general supervision of the Secretary. The Director of the Office shall be directly responsible to the Secretary.

REPORT

SEC. 232. The Director of the Office shall annually prepare and submit to the Congress a comprehensive report on the activities and expenditures of the Office.

AUDIT

SEC. 233. The Comptroller General of the United States shall make an annual audit of the Office, in accordance with such regulations as he may prescribe. The Comptroller General shall have access to such books, records, accounts, and other materials of the Office as the Comptroller General determines to be necessary for the preparation of such audit. The Comptroller General shall submit to the Congress a report on the results of each audit conducted under this section.

PURPOSE

The purpose of H.R. 3809[1] as amended by the Committee is to establish programs for the development of repositories for the safe permanent disposal of high level nuclear waste and spent fuel, and to provide for the safe stabilization and long-term protection of sites for the disposal of low level radioactive waste.

BACKGROUND

The need for legislation to address problems besetting nuclear waste management, and Congressional efforts to address these problems, has increased and become urgent since the early 1970's. Prior to this time, the inventory of wastes from nuclear activities grew with little public notice and minor Congressional concern. An opiate of confidence that the technical issues effecting nuclear waste disposal were easily resolvable for decades rendered Federal officials responsible for providing the facilities apathetic towards addressing those technical issues, and unprepared for the immense social and political problems which would obstruct implementation of a serious repository development program. "Paper" analyses and future plans were accepted as adequate assurance that disposal facilities would be available when needed until in the 1960's increasing environmental awareness and decreasing confidence in the Federal government resulted in growing public attention to the potential problems associated with nuclear power. The Atomic Energy Commission, predecessor to the Department of Energy and the Nuclear Regulatory Commission, reacted with a rush to develop a pilot permanent high level waste disposal facility. The rejection of a site for the facility in Lyons, Kansas in 1971 after an intense political attack on the program, followed quickly by revelations of serious technical flaws in the site, are now widely recognized as the landmark event in nuclear waste management history which would color future repository siting activities through the present day.

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[1] H.R. 3809 was introduced by Mr. Udall.

Next, Federal credibility in nuclear waste management practices was undermined by widely publicized and massive leaks of radioactive liquids from tanks at the Federal Hanford reservation. A release of 115,000 gallons of liquid from one Hanford tank in 1973 has been said to have been a major factor in a successful public referendum in California prohibiting the construction of new nuclear power plants in the state until a solution to the waste disposal problem is demonstrated.

Increased pressure to resolve the problem sent the Federal nuclear establishment in 1976—then the Department of Energy Research and Development Administration (ERDA)—looking for a site in Michigan, where political uproar quickly brought the program to defeat again, this time even before enough drilling could be accomplished to determine whether technical flaws in the site existed.

During this period the U.S. nuclear industry relied not on the repository development program but rather on a spent fuel reprocessing industry, and recycle of uranium and plutonium, as the solution to the "back end" of the nuclear fuel cycle. Utilities' liability for nuclear spent fuel was expected to end when the fuel was shipped to a reprocessing facility; contracts for reprocessing services were expected to cover management and disposal of waste streams from the facilities.

For a variety of regulatory and economic reasons reprocessing did not materialize as a viable industry in the United States. In the mid-70's it was determined not to be economic to fabricate light water reactor fuel using recovered uranium, and the cost of management and disposal of wastes from reprocessing facilities had been underestimated in early contracts. Two full-sized reprocessing plants and one pilot facility were retired—one of the full-sized facilities before it ever operated—and another company's plans for construction of a facility were canceled by 1976. Concurrently, President Ford requested that the Nuclear Regulatory Commission halt proceedings for the licensing of mixed oxide fuel recycle. Subsequently, in 1977, President Carter announed that due to concern over the potential for proliferation of nuclear weapons arising from an expanded plutonium-based nuclear economy, spent fuel reprocessing and the development of advanced plutonium-based reactors would be indefinitely deferred in this country.

The domestic nuclear industry was confronted not only with a shift in its technical future but with a sudden and unanticipated liability in the form of spent fuel stored at reactor sites with no near-term destination. The absence of a destination for the fuel posed two substantial problems: first, reactors had not been designed with lifetime spent fuel storage capacity; and second, growing inventories of spent fuel at the sites heightened public concern regarding whether a solution to the nuclear waste disposal problem existed.

A lasting result of the events of the 1970's has been a continuing tendency on the part of nuclear utilities to seek resolution of the nuclear waste management problem through the initiation of spent fuel reprocessing in the United States. In fact, reprocessing is not a waste management function. Another result has been a tendency on the part of utilities to hold the Federal government responsible for the lack of storage space for spent fuel.

Although the Federal government cannot be shown to be responsible for the failure of the U.S. reprocessing industry, Federal waste management policies can be seen to have exacerbated or created a spent fuel bottleneck. The failure of the government to provide a permanent waste disposal facility during more than 30 years of Federal nuclear activities is unmitigated. In addition, in 1977 President Carter announced to the domestic nuclear industry that the Federal government would provide interim storage for utilities' spent fuel. President Carter's administration did not have adequate authority to carry through with the promise, and was unable to obtain it from the Congress, while private efforts which had been underway to provide interim storage capacity were abandoned.

Even if utilities had sought to provide interim storage capacity for spent fuel for the long term, the waste management problem would have been urgent. In 1979, the D.C. Court of Appeals chastised the Nuclear Regulatory Commission in *Minnesota* v. *NRC* for relying on apparently shallow technical evidence in reaching its general determination that it could continue to license reactor operations—and, specifically at issue in the case, expansion of spent fuel storage at reactor sites—based on its "reasonable assurance" that disposal facilities would be available for nuclear wastes when needed. Stopping short of contradicting the Commission's confidence, the court recommended that NRC review its basis for this confidence in a thorough and technical manner. The ensuing NRC "waste confidence" review continues to this day with no conclusive determination having been reached on the issue.

Failures in the Federal repository development program, the collapse of the domestic spent fuel reprocessing industry and quickly deteriorating public confidence in our ability to deal safely with nuclear waste, together with other critical safety and economic issues, were seriously undermining the strength of the domestic nuclear industry.

Nuclear waste management was on its way to becoming a top Federal energy priority. In 1977, funding for the Federal waste management program was expanded by more than five times the previous year's level.

Thorough reviews of the institutional, technical, political and social problems hindering the waste repository development program were undertaken by a 1975 ERDA task force, by a 1978–79 Interagency Review Group and by a special Presidential commission in 1980, the State Planning Council on Radioactive Waste Management. The recommendations of these groups laid a foundation for a comprehensive, step-by-step approach to repository development. Although there is not unanimous agreement on all aspects of the nuclear waste management program, there is a solid consensus on major elements of the Federal program, and on the need for legislation to solidify a program and keep it on track. These consensus program elements are incorporated in the Committee amendment to H.R. 3809, along with the Committee's recommended approaches to some of the controversial aspects requiring to be addressed.

A broad national interest in enacting nuclear waste management legislation led to the passage in the 96th Congress of bills containing elements very similar to those represented by the Committee amendment to H.R. 3809 in the Senate and the House. Differences between the Senate and House versions of the legislation were not resolved in that Congress. The Committee's recommendations this year are based closely on legislation reported by the Committee in the last Congress, H.R. 6390, and on the multi-committee agreement subsequently passed by the House, H.R. 8378.

During both the 96th and 97th Congresses, it was initially the desire of the Chairman, who authored the introduced bills, that the Committee address not only the nuclear waste management issue but the comprehensive mass of problems effecting the domestic nuclear industry. Both H.R. 6390 and H.R. 3809 as introduced included titles effecting siting and regulation of nuclear reactors, nuclear insurance and other pressing issues. Some of these issues have been addressed in other legislation. The Committee has reluctantly and without prejudice decided not to report those titles of the legislation not directly related to the nuclear waste management problem. The complexity of all the nuclear issues and the urgent national demand for an answer to the waste disposal question have convinced the Committee to recommend enactment in this legislation vehicle of only the nuclear waste measures. The Committee intends to return to consideration of other proposals embodied in H.R. 3809, particularly review of the Price-Anderson Nuclear Liability Act.

The Program for Development of Permanent Repositories

The Committee strongly recommends that the focus of the Federal waste management program remain, as it is today, on the development of facilities for the disposal of high level nuclear waste which do not rely on human monitoring and maintenance to keep the wastes from entering the biosphere. As has been emphasized and reiterated over the lifetime of the Federal nuclear program, high level wastes should not be a burden on future generations, and must be disposed of by those who benefited from the energy derived from the nuclear activities which created the wastes.

The status of our technical ability to provide these permanent disposal facilities, or "repositories", is considered by the Committee to be technically advanced to a point which justifies implementation of the technology. Scientific reviews of the proposed design of deep geologic repository systems repeatedly show that in principle the hazards of nuclear waste disposal are small. In practice, however, management of nuclear wastes has been inadequate to guarantee that the risks will be small in fact. It is necessary, therefore, to provide close Congressional control and public and state participation in the program to assure that the political and programmatic errors of our past experience will not be repeated.

The repository program is based on the technical approach recommended by a series of Federal study groups since 1975. The essential elements of the program include:

Commitment to a waste disposal technology relying on primary geologic containment provided by a solid rock formation located deep underground, together with containment by engineered barriers including the form and packaging of the nuclear waste, which will provide safe containment of the waste without reliance on human monitoring and maintenance after an initial period of testing and subsequent closure of the repository.

In-depth, thorough study of a number of sites, in different geologic media, determined by surface investigations to be preliminarily qualified as potential repositories.

A cooperative and concurrence role in the Federal program for States and Indian tribes where repository sites are studied or developed, including an opportunity for such governments to veto development of such sites if they so desire.

Ultimate Federal responsibility for high level nuclear waste disposal, including the ultimate right to override a state or tribal site veto by joint resolution of Congress and the President.

Total financial support for the Federal repository development program by generators of high level waste who will use the repository developed under the program.

Financial assistance through program funding of states and tribes participating in the repository site investigation program, and full impact assistance for states or tribes where repositories are developed.

A clear "roadmap" of regulatory requirements and requirements for environmental impact statements and other public information to provide a predictable flow of information and opportunity for public participation through the decades of repository development activity.

Expedited judicial review of court challenges to the program as it is implmented.

A legislated schedule for Federal decisions and actions for repository development.

The major steps in the proposed repository development program and the proposed schedule for implementation of the program represented in the Committee amendment to H.R. 3809 is as follows:

Chronology

180 Days After Date of Enactment.	Secretary of Energy issues guidelines for recommendation of sites proposed to be studied in-depth for possible licensing as repositories.
Not Later than 1 Year After Date of Enactment.	Secretary of Energy recommends to President at least 3 sites in not less than 3 geologic media to be studied for possible development and notifies States and Indian tribes of the recommendation.
Not Later than February 1, 1985.	Secretary recommends at least 2 additional sites to President for study.

Chronology—Continued

Not Later than 60 days After the Secretary's Recommendations.	President approves or disapproves sites for study and notifies States and Indian tribes of his decision.
After President Approves a Site for Study.	Secretary of Energy holds public hearings near each site and submits environmental assessment to States or Indian tribes.
After Secretary Submits Environment Assessment To States and Indian Tribes.	Secretary of Energy sinks study shafts at each site and carries out other site characterization activities.
After Completion of Site Characterization, public hearings and an EIS.	Secretary of Energy notifies States and Indian tribes of his decision to recommend to President approval of at least one site for licensing and development as a repository.
No Sooner than 30 Days After Notification of States by Secretary of Energy of His Decision to Recommend a Site to President.	Secretary of Energy may recommend the site to the President for approval for licensing and development.
Not Later than March 30, 1987, but not before Secretary of Energy Recommends a Site for Approval as a Repository.	President submits to Congress the recommendation of a site qualified for application for licensing as a repository.
If Congress Approves the Site.....	The designation of a site as suitable for license application is effective if a petition for disapproval is not submitted to Congress by a State or Indian Tribe, or if Congress acts to override a State or Tribal disapproval.
If A State or An Indian Tribe Submits to Congress a Petition for Disapproval.	Congress has 90 calendar days to pass a joint resolution overriding the petition of disapproval under expedited procedures.
If Congress Does Not Override a State or Tribal Disapproval.	President shall submit to Congress another site recommendation within 1 year of the disapproval.
When A Site Designation has become Effective (i.e., has not been Disapproved).	Within 90 days the Secretary of Energy shall submit to NRC a license application for development of the site.
Not Later than January 1, 1989 or the Expiration of 3 Years After the Submission of the License Application (whichever is later).	NRC shall approve or disapprove a construction authorization for construction of a repository at the site.
Around 1995....................................	Operation of the first national high level nuclear waste repository.

THE TECHNICAL APPROACH

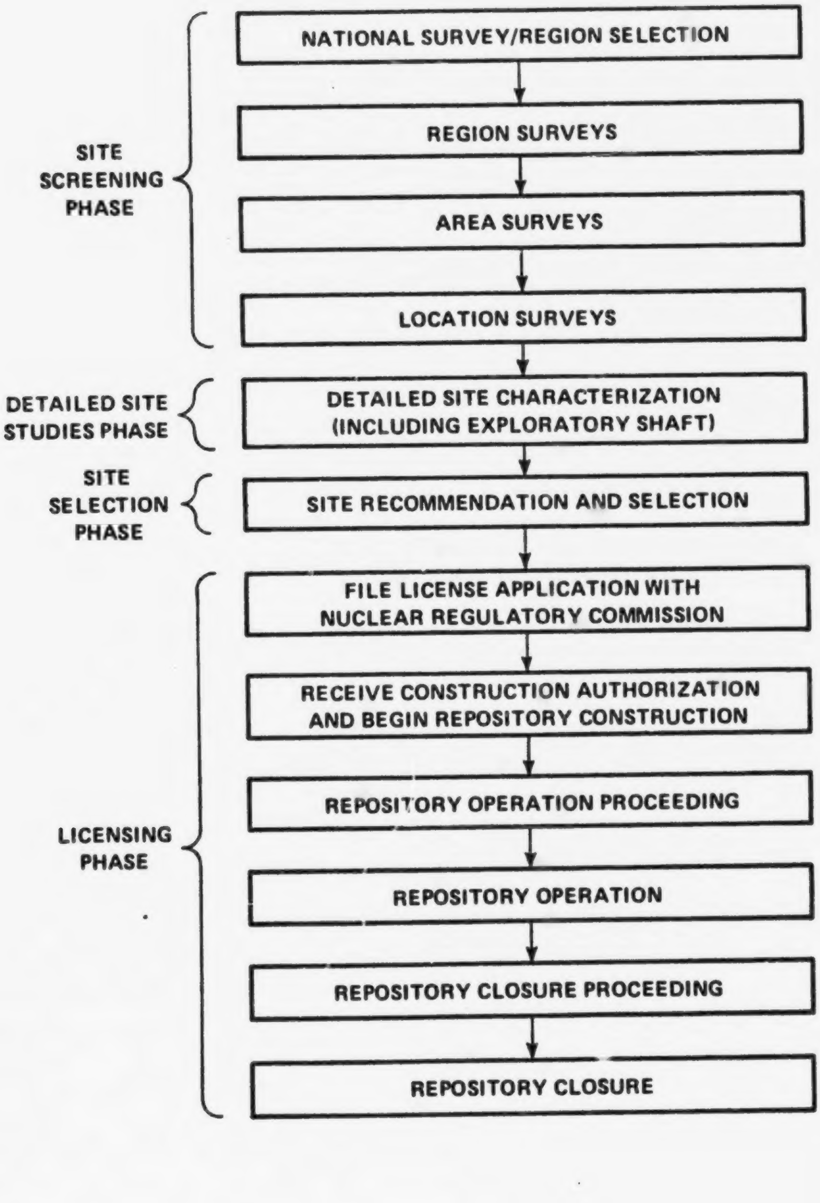
Despite various technical and political setbacks, substantial progress has been made in the waste management program over the past decade. The Committee amendment to H.R. 3809 largely endorses the technical approach which has evolved over this period through government effort with technical expertise and public participation. It is a conservative program designed to provide a maximum of information for the public and for licensing and other technical reviews. A broad site survey program is included to evaluate a deverse number of potential repository sites in various geologic media, both to impove the quality of the sites finally developed and to protect the program from delay and the appearance of failure which could result from abandonment of a site.

The risk that a site which had been considered probably adequate for development could be abandoned after significant commitment had been made to the site is a technically unavoidable aspect of repository development. It is a result of the limit of our ability to know with certainty all the characteristics of a rock formation deep underground until the rock site has actually been excavated and surveyed from the "horizon", or level of the repository.

The site investigation plan calls for shafts to be sunk to the horizon before a decision can be made to proceed with selection and licensing of a site. Even this cautious approach cannot guarantee, however, that the rock formation will not change unexpectedly or include a fracture or other anomaly further outward on the area of rock which will be excavated for the repository tunnels.

The repository tunnels will cover approximately 2,000 acres of underground rock. After authorization has been granted by the Nuclear Regulatory Commission for construction of the repository, repository rooms and tunnels will be hollowed out of the rock. When the area has been mined and studied, and surface facilities are constructed, the Commission will be requested to allow the Department of Energy to begin emplacing high level waste or spent fuel in the site. After the repository is loaded with waste and spent fuel, a period of observation will begin during which the Department, the Commission and independent participants including the host state will test the rock and the radioactive material to assure that the system's behavior corresponds to the behavior predicted by models that have been developed to assess repository safety. This period of observation may last from 10 to 20 or 30 years, depending on test results and the increase in confidence achievable from longer term observation. Not until the Commission and other participants are satisfied of the safety of the system will the repository be backfilled with mined material and closed up permanently.

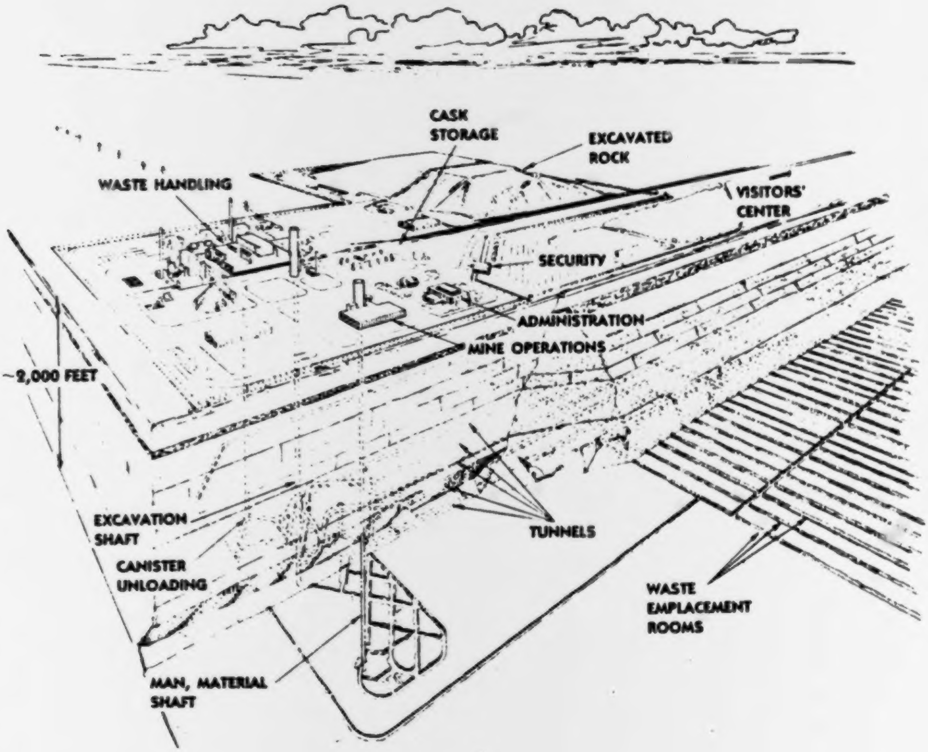
REPOSITORY SITING PROCESS AND SUBSEQUENT LICENSING STEPS


SITE SCREENING PHASE
NATIONAL SURVEY/REGION SELECTION
REGION SURVEYS
AREA SURVEYS
LOCATION SURVEYS
DETAILED SITE STUDIES PHASE
DETAILED SITE CHARACTERIZATION (INCLUDING EXPLORATORY SHAFT)
SITE SELECTION PHASE
SITE RECOMMENDATION AND SELECTION
LICENSING PHASE
FILE LICENSE APPLICATION WITH NUCLEAR REGULATORY COMMISSION
RECEIVE CONSTRUCTION AUTHORIZATION AND BEGIN REPOSITORY CONSTRUCTION
REPOSITORY OPERATION PROCEEDING
REPOSITORY OPERATION
REPOSITORY CLOSURE PROCEEDING
REPOSITORY CLOSURE

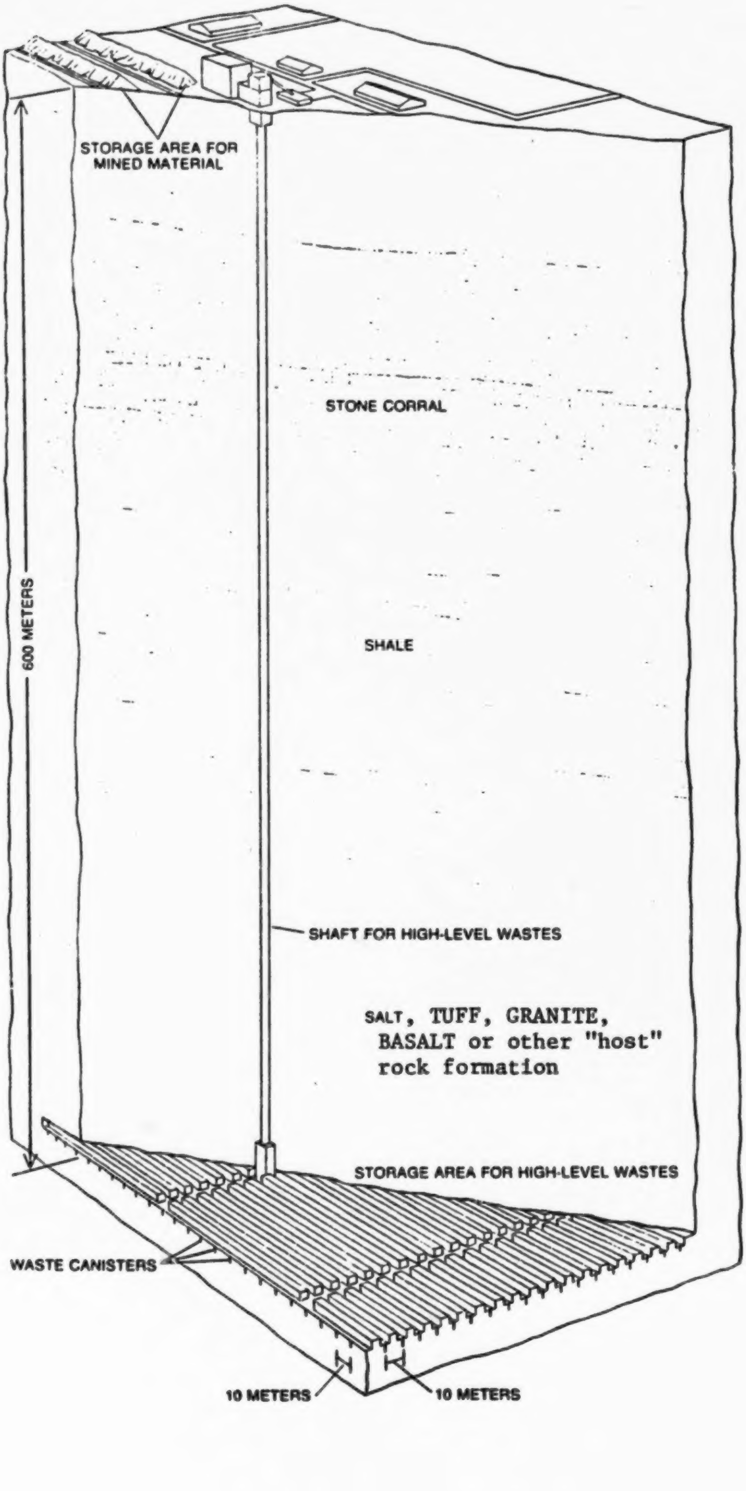
Contruction of permanent, deep geologic facilities has been the primary plan for high level waste disposal since being recommended by the National Academy of Sciences in 1957. A commitment to packaging or processing the waste in forms which will retard movement of radionuclides into the environment has been solid since at least 1976.

Repositories will be located about one-half mile underground. Surface facilities for the system will cover about 400 acres of land. Surface facilities will include buildings for storing waste and spent fuel for logistical purposes, areas for storage of rock from repository excavation activities, facilities for final packaging of wastes for disposal, administration and security buildings and a building directly over the top of the shaft into the repository in which waste and equipment will be loaded into and out of elevators located in the shaft. Trucks or rail cars will carry waste and equipment through the repository tunnels. Radioactive material will be shielded and emplaced in the repository so that operations underground will not be carried out in a radioactive environment. Public access to the repository under guided tour will probably be possible.

ARTIST'S CONCEPT OF REPOSITORY FACILITIES ABOVE AND BELOW GROUND


CASK STORAGE
EXCAVATED ROCK
WASTE HANDLING
VISITORS' CENTER
SECURITY
ADMINISTRATION
MINE OPERATIONS
~2,000 FEET
EXCAVATION SHAFT
CANISTER UNLOADING
TUNNELS
WASTE EMPLACEMENT ROOMS
MAN, MATERIAL SHAFT

HORIZONTAL PERSPECTIVE OF REPOSITORY SITE


STORAGE AREA FOR MINED MATERIAL
600 METERS
STONE CORRAL
SHALE
SHAFT FOR HIGH-LEVEL WASTES
SALT, TUFF, GRANITE, BASALT or other "host" rock formation
STORAGE AREA FOR HIGH-LEVEL WASTES
WASTE CANISTERS
10 METERS
10 METERS

INTERIM SPENT FUEL STORAGE

As discussed in the "Background" section of this report, a bottleneck developed in the nuclear fuel cycle when reprocessing failed as a domestic industry. The private sector was unprepared for large-scale storage of spent nuclear fuel previously supposed to be sent for reprocessing, and the Federal government ws unprepared to take the spent fuel for disposal. In 1977, President Carter offered to provide a Federal program for interim storage of utilities' spent fuel, and the Congress has been considering the program ever since without having reached agreement as to its necessity or desirability. During this period, utilities have begun efforts to increase spent fuel storage capacity at reactor sites. Technical advances have made available new storage systems and equipment which can further increase on-site capacity. Because of the technical advances in at-reactor storage technology, and because of the logistical advantage of holding spent fuel at reactor sites until there is a need to move it for reprocessing or disposal, the Committee has not recommended that centralized storage capacity be developed by the Federal government. It has recognized, however, that some need for interim storage capacity may exist which utilities cannot meet in a timely manner. The Committee recommends, therefore, that existing capacity at Federal facilities be made available to private utilities if it is demonstrated that utilities cannot provide their own capacity.

Use of Federal capacity for interim spent fuel storage has previously been rejected due to certain licensing problems. The available Federal facilities were constructed and have been operated for purposes of Federal defense and research and development activities and as such have been exempt from licensing by the Nuclear Regulatory Commission. The kind of documented quality assurance and construction specifications which would exist for a licensed facility, and necessary for licensing proceedings, do not exist for these facilities. It would not be feasible, therefore, to initiate licensing proceedings at these facilities. Licensing proceedings would normally be required were the activity of the facility to change to include storage of commercially-generated and privately-owned spent fuel.

The Committee recommends that the facilities be made available, and that necessary technical changes be made to the facilities, consistent with the facilities' current license-exempt status. The Committee also recommends that the facilities be made available without applicability of requirements of the National Environmental Policy Act for preparation of an environmental impact statement. The Committee has determined that such capacity as will be needed under this program must be available quickly. In addition, the Committee notes that no single facility should be required to be expanded or changed in operation to an extent substantial enough to pose a threat to public health or safety and the environment or to engender impacts very substantially beyond the impacts of the activities now underway at the facilities.

The Department of Energy has identified 18 existing facilities currently or previously in use for spent fuel storage. One of these facilities alone—the U-Canyon at the Hanford Reservation—can provide 6,000 to 9,000 metric tons of storage capacity. Since the

Committee has limited the interim storage program to a maximum of 1800 tons of storage capacity, it is not anticipated that massive expansion of any existing departmental facility will be necessary.

Some modification will probably be required for use of any Federal facility for storage of commercial spent fuel, due to physical differences in the characteristics of commercial and defense or research fuel. In order to provide safety oversight of these modifications without entailing a formal licensing proceeding, the Committee recommends that the Nuclear Regulatory Commission make a determination that such modification and use of the facility will adequately protect public health and safety. The Committee intends that the Commission conduct its review and make its determinations using cooperative procedures similar to those used for the Commission's review of the Department's Fast Flux Test Facility.

INCREASING STORAGE CAPACITY AT REACTOR SITES

Under the Committee amendment to H.R. 3809, no utility will be eligible for use of Federal interim storage capacity for spent fuel unless it can show both that it can not provide its own capacity in a timely manner, and that it is diligently pursuing alternatives to use of Federal capacity. The Committee anticipates that all utilities can provide increase storage capacity in a timely, safe, and economic manner over the next eight years. Although there may be a near-term need for use of Federal capacity, the Committee has recommended programs under which it anticipates all utilities will be able to resolve their storage problems by the end of the decade.

The obstacles to increased at-reactor storage have been said to include licensing delays and the lack of economic storage alternatives. A letter from a Department of Energy official to the Hon. Butler Derrick evidences the morass and stalemate which has characterized the at-reactor spent fuel storage situation. The Department, having identified a spent fuel storage problem and making a determination to help resolve the problem, offered to help utilities construct and license at their sites some of the new storage technologies. The Department made the offer to twelve utilities, all of which have asserted that they have urgent near-term storage shortages. Only three utilities agreed to participate in the program. The others cited regulatory impediments as reasons for their lack of interest in using this assistance. The Committee has attempted to address these obstacles in H.R. 3809, in anticipation that utilities will make more effort to implement storage technology as a result. A copy of the Department's letter to Mr. Derrick follows.

DEPARTMENT OF ENERGY,
Washington, D.C., Jan. 28, 1982.

Hon. BUTLER DERRICK,
House of Representatives,
Washington, D.C.

DEAR MR. DERRICK: The Department of Energy's (DOE) spent fuel storage program activities concentrate on the support of utility license applications for rod consolidation and dry storage in casks, drywells, and silos. We believe these alternative storage technologies have the potential to safely and efficiently meet the interim spent fuel storage needs of commercial domestic reactors. However, assistance and support in the commercial application of these storage technologies is needed for these storage options to represent viable solutions to the spent fuel storage problem. The Department is working with utilities with near-term storage problems to explore solutions to their particular needs.

In May 1981, the Department invited representatives from all the 57 utilities with nuclear reactors to Washington to participate in a workshop on storage alternatives. Most utilities attended, but essentially no utility was interested in discussing the possibility of entering into a cooperative program with the Department to demonstrate and license the alternative storage techniques. So the Department contacted the utilities with near-term storage problems individually and eventually had discussions with the following 12 utilities:

1. Carolina Power and Light Company.
2. Consumers Power Company.
3. Duke Power Company.
4. Florida Power and Light Company.
5. General Public Utilities.
6. Maine Yankee Atomic Power Company.
7. Northeast Utilities.
8. Portland General Electric Company.
9. Power Authority—State of New York.
10. Tennessee Valley Authority.
11. Virginia Electric and Power Company.
12. Yankee Atomic Electric Company.

Following initial discussions, only four utilities decided to conduct detailed discussions with the Department. They were the Florida Power and Light Company (FP&L), Portland General Electric Company (PG&E), Tennessee Valley Authority (TVA), and Virginia Electric and Power Company (VEPCO). PG&E and VEPCO eventually discontinued these detailed discussions. We are currently pursuing a cooperative program with FP&L and are just awaiting approval of the TVA Board of Directors for a DOE/TVA cooperative program. The TVA program involves the licensing of two large capacity storage-only casks at the Browns Ferry site during fiscal year 1983. In addition, DOE and TVA have a joint program to demonstrate boiling water reactor rod consolidation. We are currently seeking a utility partner for a large scale pressurized water reactor rod consolidation program and a large scale cask storage program at a reactor site.

As part of these cooperative programs, the Department has promised to support licensing by developing generic licensing information that can be used by all utilities and by conducting unlicensed storage operations at a Government site with utility supplied fuel and casks. This unlicensed storage would provide any data required by the Nuclear Regulatory Commission (NRC) during licensing. However, many utilities that the Department has talked with are not willing to be the first to go through licensing since there is the potential for extended licensing proceedings. This is due to the practice of prenoticing and extensive hearings which allow many opportunities for intervention and delay which not only frustrate their nuclear objectives but also carry over into rate making hearings. Discussions with NRC staff have revealed that they operate this way because of past accusations of working in secret with utilities. Licensing relief via legislation to deal with this problem is needed, and we would be happy to discuss this with you.

Another area of concern to the utilities is the lack of a firm basis on which to collect money for their fuel storage and disposal costs. Public utility commissions have refused to include or have reduced requests by utilities for coverage of fuel storage and disposal costs in their rate structures because of uncertainty concerning the disposal fee and when it is paid. We believe a tax on nuclear fuel with early payment to the Government of the disposal fee would provide a firm basis for the utility to recover costs from the ratepayer.

If you have any questions, we would be happy to discuss these issues with you or your staff.

Sincerely,

Franklin E. Coffman,
Deputy Assistant Secretary for Nuclear Waste
Management and Fuel Cycle Programs,
Office of Nuclear Energy.

The Committee amendment strictly limits the nature of issues which can be raised in licensing proceedings for new or expanded storage capacity at reactor sites. It is the Committee's position that enactment of H.R. 3809 as amended will render moot certain issues now being litigated in capacity expansion proceedings. Under the Committee amendment to H.R. 3809, for example, a Congressional determination is made that spent fuel should be stored at reactor sites when possible. Alternative site reviews therefore are not needed prior to capacity construction. A commitment to a permanent repository program, and a detailed program and schedule leading to operation of such a repository, also included in H.R. 3809, render unnecessary consideration of whether expanded spent fuel storage at reactor sites will create de facto permanent disposal sites. The Committee is also recommending that the Commission not consider issues previously considered and decided, or issues relating only to reactor operations and not fundamentally to the storage capacity expansion, since questions relating to whether the reactor should be operating can be considered in more appropriate forums.

There will undoubtedly be major, substantial issues relating to licensing of new technologies for spent fuel storage at reactor sites which must be fully reviewed. The existence of new technologies has been demonstrated in this country and in other nations, and the Committee anticipates that adequate data for licensing of these technologies can be provided in the near term.

Technologies have been developed under Department of Energy spent fuel storage programs, and in response to the changing nature of national spent fuel storage needs. When reprocessing was expected to be part of the nuclear fuel cycle, storage was expected to be needed primarily for "hot" fuel, newly removed from the reactor core, which would remain at the site for no more than 10 years before being sent to a reprocessing plant. Utilities' inventories of spent fuel are now larger, and include older, cooler fuel. Uncertainties effecting the back end of the fuel cycle remain, and weigh against the economic wisdom of construction of large-scale lifetime-capacity storage facilities for many utilities. The storage techniques which have evolved in response to these changes are passively cooled, as a result can be constructed at lower cost, and can be added in small increments as determined to be necessary.

In order to expedite licensing and use of these technologies by utilities, the Committee recommends efforts by the Department and the Commission to develop special, streamlined proceedings for technologies such as spent fuel storage casks which can be constructed in factories and moved to reactor sites in modules. Generic licensing for such technologies would seem to be possible to a large extent, although site specific adaptations would require review.

Although recent Department of Energy studies have projected that as much as 6,480 metric tons of spent fuel storage capacity may be required by utilities by 1995, the Committee anticipates that implementation of new storage technology, expedited licensing proceedings, and the requirement for diligent pursuit of alternatives included in H.R. 3809 will result in no need for Federal interim spent fuel storage in that time frame.

MONITORED RETRIEVABLE STORAGE

The Committee has recommended in H.R. 3809 that the Department prepare a contingency plan for development of large-scale facilities for long-term storage of high level waste and spent fuel, in case it should be determined by Congress at some future time that such facilities are necessary as part of the nuclear waste management system. The Committee is not recommending and does not authorize construction of such facilities at this time or any future time. The Committee has recommended that a study and design of such facilities be prepared with caution, recognizing the serious consequences which commitment to construction of such facilities could have on the effort to develop permanent, high level waste repositories. The Committee notes that there are no conclusive technical, economic or social reasons for developing this technology at this time. The Committee also notes, however, that the technology could be desirable or necessary at some undetermined future time. It is solely to insure the nation that the technology can be available if needed that the Committee recommends the Monitored Retrievable Storage study.

Monitored Retrievable Storage (MRS) technology is simply spent fuel storage using one of a variety of technologies. In the study recommended by the Committee, it is assumed that the storage would be intended to be designed to take care of spent fuel for a very long term. The Committee recommendation clearly states that this technology is not to take the place of or obstruct the development of permanent repositories for nuclear waste or spent fuel.

MRS facilities could be developed for a number of different reasons. A Department of Energy study of this concept[2] examined the possible uses of the technology and concluded, as did the Committee, that none of the possible uses can be justified at this time, although many of them could be shown desirable as the waste management program evolves. Following is a review of some possible uses and impacts of MRS technology.

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[2] "The Monitored Retrievable Storage Concept, A Review of Its Status and Analysis of Its Impact on the Waste Management System," U.S. Department of Energy, December 1981.

The objection most often raised to the concept of large-scale, long-term MRS storage is that it is not compatible with, and may be destructive of, a national or societal goal to dispose permanently of high-level radioactive wastes.

Use of large-scale long-term retrievable storage facilities was proposed by the Atomic Energy Commission in its draft EIS on nuclear waste disposal in 1974. The draft was determined to be inadequate in addressing a disposal program largely due to its emphasis on the MRS approach, which was then called "Retrievable Surface Storage Facilities", or RSSF. The EPA concluded, in its comments on the AEC draft:

> A major concern with the employment of the RSSF concept is the possibility that economic factors could later dictate utilization of the facility as a permanent repository, contrary to the stated intent to make the RSSF interim in nature. These economic factors would consist mainly of the fiscal investments attendant to its construction and the activities which arise in the commercial segment of the economy to support its operation.

The EPA added:

> We fear that the initial construction costs of an RSSF, together with its support facilities and peripheral industries, may comprise such an investment that the potential economic impact attendant to its cancellation, after two or three decades of operation, may overshadow the environmental advantaged of decommissioning. In our view it is highly unlikely that any of the RSSF concepts will prove to be an acceptable ultimate disposal technique for this waste. (EPA comments on WASH-1539, the AEC draft EIS for Management of Commercial High-level and Transuranium-Contaminated Waste, November 21, 1974.)

Once waste is loaded into an MRS facility, barring a serious accident, the cost of moving the radioactive material and decommissioning the MRS in funds and human exposure would outweigh the advantage of relocating the waste underground to a permanent repository. Technical analysts have specluated that ultimately, perhaps 100 or hundreds of years in the future, society could tire of monitoring the facility or the safety of the facility could deteriorate. Future generations would then bear the burden of either relocating or burying the waste, or making the decision to leave it permanently in a facility not designed for that purpose.

SAFETY ISSUES

Consideration has been given to whether use of monitored storage over extended periods could increase the safety of management of high-level nuclear wastes. The consensus of witnesses before the Energy and the Environment Subcommittee and the recent Department of Energy study was that long-term monitored storage does not provide safety advantages, although it theoretically could help reduce the cost of geologic disposal. Following is a review of some of the issues that have been raised:

1. Is waste safer in a facility where we can watch it than it would be in a facility that has been permanently closed up?

The National Academy of Sciences indicated that the risks of permanent disposal are less than the risks of monitored storage. The Nuclear Regulatory Commission indicated that monitored storage is probably "safe enough," if society is diligent over thousands and tens of thousands of years about keeping up the quality of the monitoring and maintenance and eventually relocating the waste to either new monitored facilities or permanent disposal facilities.

Technical experts emphasize that selection of monitored or permanent disposal is essentially a societal decision which should be based on: (1) the level of safety desired, and (2) the extent to which one wants to rely on future decison-makers and future generations to deal with the wastes.

2. Is a permanent repository safer if the waste has been cooled in an MRS facility for long periods before being disposed of in a deep geologic facility?

There is nearly unanimous agreement that cooling spent fuel for ten years prior to disposal increases the safety of the repository if spent fuel is reprocessed and the waste is turned into glass. At this point, the heat generated by radioactivity in the waste drops to a point where it will not cause the glass to become brittle. All spent fuel is and will be cooled ten years before being moved away from the reactor.

The 1981 Department of Energy study on MRS technology concludes: "Aging the wastes (prior to disposal) reduces repository thermal load and thus the temperatures that will be experienced. This would reduce the rate of various physical and chemical degradation processes and potentially lead to increased safety margins in the repository. Quantitative conclusions on those points have not been reached yet."

ECONOMIC ADVANTAGE

Long cooling periods in an MRS facility would allow engineers to put more waste into a given repository without raising the overall repository temperature peak. The savings in repository cost resulting from increased capacity by cooling waste must be balanced against the cost of holding the waste on the surface. The Department of Energy study concludes:

> Storing fuel for 100 years in MRS facilitis * * * requires more undiscounted dollars than initiating disposal in the year 2000, * * * even though there is an assumed 40 perent savings in repository costs because of cooldown of the spent fuel or waste. The total cost increase results from the additional cost of the MRS facility, an extra transportation link, and 100 years of repository research and develtopment (arbitrarily set at $50 million per year), which offsets the eventual repository cost savings.

REPOSITORY AS MRS

In practice, it is possible that a deep geologic repository such as will be constructed under H.R. 3809 could provide the economic and safety advantages which might prove desirable in the context of MRS technology. A repository can be designed and constructed in such a way that waste or spent fuel would be air-cooled for long periods of time, as it would be in a surface-sited MRS. In addition, the repository can be designed with total retrievability so that for whatever period is desired a primary protection of the waste would be human monitoring and maintenance. Cooling and total retrievability options are expensive, but might compare favorably with the expense of building separate, additional surface facilities for these purposes. Such designs are being considered by the Department and are understood to be technically feasible. (See Retrieval Options Study, ONWI-63, Department of Energy, March 1980).

MRS AS BACK-UP FOR REPOSITORY PROGRAM

The Committee notes that although there is substantial confidence that the repository development program represented by the Committee amendment will provide safe facilities in a timely manner, it is not possible to resolve all uncertainties or predict all obstacles. The potential for failure or serious delay in the program exists. Monitored Retrievable Storage may be required in the event of failure or long-term delay of the repository development program. Indeed, this need for insurance that some safe technology will be available when nuclear reactors begin being decommissioned is the Committee's primary basis for recommendation of the detailed planning for an MRS program included in the Committee amendment to H.R. 3809.

DEFENSE NUCLEAR WASTE

H.R. 3809 as amended by the Committee does not mandate actions or affect in any way current regulatory requirements or exemptions applicable to repositories or other storage or management facilities for high level waste created by nuclear defense activities or nuclear research activities of the Department of Energy or the Department of Defense. The Committee rejected an amendment proposed to explicitly exempt from the Act any facilities for disposal of defense nuclear wastes, in order to assure that facilities constructed and operated under this Act could be available for disposal of wastes from the Department of Energy or the Department of Defense activities if those agencies should elect to use these facilities.

The Committee intends that the Secretary of Energy develop and operate for the nation at least one permanent disposal facility for high level waste and spent fuel as required under the provisions of H.R. 3809. This legislation does not prohibit the Secretary from constructing and operating another waste disposal facility under some other authority, consistent with other applicable laws. The Secretary is currently undertaking such a program. The Waste Isolation Pilot Plant project has been authorized for development of a facility for disposal of transuranic wastes, which may eventually be converted to a disposal facility for high level wastes. Such a conversion would presumably subject the facility to requirements for licensing by the Nuclear Regulatory Commission of Section 202 of the Energy Reorganization Act. It would not, however, subject the facility to the requirements of this Act. The State or Indian tribe on whose territory the facility is located would receive no rights of participation or financial compensation under this Act.

The Committee does not endorse in principle or in practice the separation of programs for management of defense and commercial high level nuclear waste. It is not the objective of this legislation to address that issue, however.

It is clear that mismanagement or lack of commitment to waste management in the defense sector reflects upon and can directly affect the domestic nuclear industry. Waste leaks at the Hanford reservation and failure to plan for permanent disposal of defense high level waste has influenced public concern regarding Federal competence and commitment to deal with commercially-generated waste. It could further erode public acceptance of domestic nuclear technology if a public perception existed that a nuclear waste management program represented a solution for only half the nation's high level nuclear wastes.

By providing that repositories construted under the Committee amendment can be used for waste from any national source, the Committee is helping to assure that the waste management program will be accepted as a comprehensive solution. If after a repository is operating under this Act Federal defense decisionmakers or subsequent Congresses elect to have defense nuclear wastes delivered to the repository, the Committee amendment will have provided for that contingency. If a decision has been made to develop separate defense waste disposal facilities, this legislation would not conflict with such a decision.

PARTICIPATION AND ASSISTANCE FOR STATES AND INDIAN TRIBES

H.R. 3809 as amended by the Committee provides for states or tribes which are "hosts" to sites being studied for repositories, and sites being developed for repository operation, clear rights and procedures for participation in decisions effecting the sites and financial assistance to help them participate and to mitigate repository impacts.

During repository site studies, prior to such time as a site has been approved for licensing and repository construction, states and tribes have rights to receive all relevent information from investigations, to participate in planning of environmental assessments and site characterization activities and to make recommendations regarding other aspects of conduct of the investigations which affect the social and economic well-being of citizens of the state or tribe. The state or tribe will be provided 75 percent of the cost of participation in these activities.

The Department of Energy is required to enter into an agreement with each state or tribe where sites are being studied, laying out the procedures and standards which will define their relationship during the Department of Energy's activities. Although the Department will have fundamental responsibilities under the Committee amendment to meet schedules, fully explore sites and develop timely and appropriate information for regulatory proceedings, its responsibility to respond to and implement all reasonable suggestions of a state or tribe is also considered essential to the orderly implementation of the repository program.

The state or tribe is considered to have a responsibility to involve its own citizens in the repository development program and to provide for them full and current information regarding Federal activities in the state.

The state or tribe on whose territory a site is located is considered to be the primary governmental participant in the repository program. If a site is within the boundaries of tribal lands, a state in which the reservation was situated would not have jurisdiction on development of that site. Adjacent states and tribes are given rights to receive critical information and participate in planning to some extent, however.

The participation of an affected Indian tribe in activities proposed to be located on Indian land is consistent with existing law. The established law recognizes Indian tribes as semi-sovereign entities, based upon the historical concept of conquest and the realities of cultural diversity which existed during this country's formative years. Drawing from Article 1, section 8, clause 3 of the U.S. Constitution granting to the Congress the power to regulate commerce with the Indians, the United States Supreme Court held that land reserved to a particular Indian tribe by the federal government gives the tribe and its members a possessory interest in those lands, which cannot be alienated without the consent of the Federal government. *Johnson* v. *McIntosh,* 21 U.S. 543 (1823). This restriction on alienation exists to the present and applies to land reserved to Indians through treaties, executive orders, and congressional Acts. 25 U.S.C. § 463f.

A corollary to the trust relationship between Indians and the federal government is a denial to the States of the power to regulate activities within Indian reservations.

The Supreme Court stated:

> The treaties and laws of the United States contemplate the Indian territory as completely separated from that of the states; and provide that all intercourse with them shall be carried on exclusively by the government of the union.

Worcester v. *Georgia,* 31 U.S. 515 (1832). As a result, a state is severely limited in its power to tax, to impose criminal penalties, and to otherwise regulate the activities of Indians in Indian country. See *DeCoteau* v. *District County Court,* 358 U.S. 217 (1959).

The Indian Reorganization Act of 1934, 25 U.S.C. § 461 et seq., recognized the right of Indians to govern themselves and set up procedures for each of the various tribes to form its own governing body, adopt a constitution, and to incorporate itself. The tribe became recognized by the Federal Government for the purpose of governing itself when its constitution was approved by the Secretary of the Interior.

One effect of such recognition is the necessity of gaining tribal consent before the Secretary of the Interior can alienate or otherwise encumber Indian land. 25 U.S.C. § 476. Subsequent legislation extended these tribal rights to other Indian communities, and extended the federal trust relationship to lands previously allotted to individual Indians.

The Committee amendment reflects current law by recognizing the right of each Indian tribe to regulate activities within the exterior boundaries of its reservation, and the absence of that right to the State in which an Indian reservation is located. The term Indian reservation is defined in the bill to include dependent Indian communities, reservations, and allotments, as defined in 18 U.S.C. § 1151. The term Indian tribe includes all groups of Indians recognized by the Secretary of the Interior under the Indian Reorganization Act and other laws.

A host state or tribe is given by the amendment a right to reject selection of a site for licensing by the Department of Energy and the President. Following through site characterization, public hearings and preparation of an environmental impact statement under the National Environmental Policy Act, the Secretary of Energy is required to recommend to the President, and the President must subsequently recommend to Congress, at least one site determined to be suitable for application for licensing as a repository. The host state or tribe may reject this recommendation by notifying Congress of its rejection within 60 days of the President's recommendation. The state or tribe must provide written justification for its decision to reject the repository.

A state or tribal rejection can only be overridden by a joint resolution of the Congress. Such a resolution is required to be treated in the Congress under special expedited procedures.

If a site is approved for licensing, and if an operating license is issued for the site by the Nuclear Regulatory Commission, the host state or tribe will receive under the Committee amendment financial, technical or other impact assistance such as it may request to mitigate impacts of the repository and to provide revenues in lieu of taxes which would be due if the facility were not Federally owned. It is the intent of the Committee that the impact assistance provided to the host state or tribe be generous and adequate to cover all reasonable impacts. The Committee did not provide direct grants or other lump-sum financial payment to the host government due to requests by the National Governors' Association that assistance be directly related to repository activities. The Secretary will be constrained in meeting requests for assistance by assuring that benefits are related to the repository and by its own determination of reasonableness.

APPLICATION OF NEPA

The Committee has attempted in its amendment to H.R. 3809 to provide a "roadmap" for compliance by the Secretary of Energy and the Nuclear Regulatory Commission with the National Environmental Policy Act (NEPA). Although every possible juncture which could require preparation of an environmental impact statement (EIS) cannot be anticipated, at least for the actions and procedures specified in the amendment, the Committee intends that the Congress will have made clear where environmental impact statements under NEPA must be prepared.

The two crucial decisions requiring preparation of EISs under NEPA are the Secretary's decision to select a site for licensing from among those characterized, and the Commission's decision whether to grant a license at the site.

The Committee amendment directs the Commission to use the Secretary's alternative site review and other data prepared for the site selection EIS to the maximum extent practicable. It is the Committee's intent that the Commission be precluded from having to undertake a repetition of the Department of Energy decisions unless it determines that new information or other considerations make a review necessary.

The Committee intends that throughout the repository development program, the Secretary and other agencies meet the general requirements and the spirit of NEPA. Where the Committee has specified that an environmental impact statement under NEPA is not required, the amendment nonetheless provides for the gathering and public consideration of relevant information and for use of informal hearings to provide educational and participatory opportunity.

The specificity of the NEPA guidelines in the committee amendment are intended to avoid litigation regarding its applicability and to ensure that the essential objectives of NEPA are met without such litigation. In some cases, the Committee's recommendation assures that information will be prepared and made publicly available, and that non-Federal governments and the public will have strong roles in decision-making, in cases where NEPA could not have been relied upon to produce these results.

INTERIM STORAGE OF TRANSURANIC NUCLEAR WASTE

The Committee has recommended that existing Federal facilities for storage of transuranic (TRU) wastes be made available, for a limited time, to private generators of such waste who have no capacity for its storage.

TRU waste is generated privately in the United States largely by companies operating under contract to the Department of Defense. Recent changes in regulatory requirements for transuranic waste disposal have led to an absence of commercial disposal capacity for this material. The Nuclear Regulatory Commission is promulgating new regulatory criteria for transuranic waste disposal. The Committee amendment to H.R. 3809 requires the Commission to complete development of such criteria. When a regulatory system for TRU waste disposal facilities is in place, the private sector will be expected to provide TRU disposal capacity and use of Federal storage capacity will no longer be allowed.

Federal TRU storage facilities are not now subject to licensing by the Nuclear Regulatory Commission. The amendment exempts these facilities from licensing which would have been required as a result of acceptance at the facilities of commercially generated TRU waste.

The Secretary is prohibited from accepting for storage TRU waste resulting from decommissioning of nuclear reactors due to the excessive amounts of such waste which would be generated.

LOW-LEVEL NUCLEAR WASTE

Subtitle C of Title II of the Committee amendment to H.R. 3809 provides for permanent care of privately owned and operated disposal facilities for low level nuclear waste, and for facilities contaminated with low level nuclear waste resulting from Federal activities under the Atomic Energy Commission (AEC) and Manhattan Engineering District (MED) projects.

This subtitle is particularly necessary as states attempt to develop new low level waste disposal sites to meet the urgent need for new low level waste disposal capacity. Low level nuclear waste is generated by hospitals, research laboratories and universities as well as by nuclear power reactors. The subtitle provides that sites developed in or by states will be fully decommissioned before they can be shut down or abandoned. Properly decommissioned sites can then be turned over to the Federal government to assure permanent care by stable Federal institutions.

Old MED and AEC sites can under the subtitle also be turned over to permanent Federal care if they meet applicable decommissioning requirements.

INFLATIONARY IMPACT STATEMENT

In accordance with rule XI, clause 2(1)(4) of the Rules of the House of Representatives, this legislation is assessed to have a minimal inflationary effect on prices and costs in the operation of the national economy.

Impacts of the national nuclear waste management program which would be enacted by this legislation will be distributed among a great diversity of regions and types of business institutions, and is not likely to particularly affect any single segment of the economy. Resolution of the permanent nuclear waste disposal problem should provide certainty and stability for waste disposal charges levied on electricity consumption.

SECTION-BY-SECTION ANALYSIS

Section 1 provides a short title and table of contents.

Section 2 provides definitions of terms used in H.R. 3809.

Section 3 separates the provisions of the act so that if through judicial review or other means any part of the act is held invalid, the remainder of the act will still be applicable and valid.

Section 4 clarifies that nothing in this act affects Section 605 of 48 U.S.C. 1491 requiring special authorization by the Congress and the Secretary of the Interior before any nuclear waste may be disposed of on any of the Trust Territories of the Pacific.

TITLE I—HIGH-LEVEL RADIOACTIVE WASTE AND SPENT NUCLEAR FUEL

Title I establishes Federal policy and programs to provide for management responsibilities in the public and private sector and to provide facilities for the storage and disposal of civilian high level waste and spent nuclear fuel.

SUBTITLE A—REPOSITORIES FOR DISPOSAL OF HIGH-LEVEL WASTE AND SPENT NUCLEAR FUEL

Section 111(a) sets out findings of Congress that nuclear waste is a national problem, which Federal efforts have not resolved for the past 30 years; that the Federal government must be responsible for developing facilities for disposal of these wastes, while the generators and owners of such wastes must be responsible for the cost of providing disposal facilities; and that interim storage of such waste and spent fuel is primarily the responsibility of the generators of such waste and spent fuel until it is accepted for disposal in a Federal facility. The Congress finds also that state and public participation in development of waste disposal facilities is essential and that high level radioactive waste and spent nuclear fuel shall not present a hazard to this or future generations.

Section 111(b) establishes that the purposes of the subtitle are to establish a schedule for development of licensed repositories that will provide reasonable assurance that public health and safety and the environment will be protected from the hazards of nuclear waste; and to establish and define Federal and State relationships and certain financial responsibilities in implementation of the schedule and associated programs.

Recommendation of Sites for Site Characterization

Section 112(a) requires the Secretary of Energy to develop guidelines to be used in selecting sites qualified to merit in-depth study as possible repository sites. The primary feature of the site specifically to be evaluated consists of a rock medium about 1,000 or more feet underground which will of itself provide one of the primary containments of the waste. Some surface or associated geologic features are also important concerns in site selection. The Secretary is required to specify in the guidelines factors which would qualify or disqualify a site from development as a repository, including proximity to natural resources or populations, hydrogeophysics, seismic activity and nuclear defense activities. The Secretary is required to give priority to sites in rock which tends to slow down transportation of radionuclides by water.

Any site is required to be disqualified from development if, according to the most recent applicable report by the Census Bureau prepared before the date the site is considered for site characterization or licensing, whichever the case may be, the site or its immediate surroundings exceed a certain level of population and population density. The surroundings will be considered, and population and density will be determined, as defined or determined by the most recent Census Bureau report giving both population and population density statistics. The surroundings will be as defined by the applicable Census Bureau report as any metropolitan statistical area, county, urbanized area or place.

The assessment of population density qualification factors is intended to consider these factors only as they exist at the time the site is considered for characterization or for application for construction authorization for licensing. Projections of future populations following development of a repository site are not intended to be relevant considerations.

The Secretary is required to recommend sites in different geologic media. The guidelines established are required to be used for selection of sites in subsection (b) and may be revised from time to time.

Section 112(b) requires the Secretary to recommend sites to the President for site characterization. Three sites in three different geologic media must be recommended no later than one year from enactment of the Act. Two additional sites are required to be recommended no later than February 1, 1985, at least one of which is required to be in granite rock and neither of which may be any of the sites previously recommended.

Recommendations are required to be accompanied by a detailed statement of the basis for the recommendation, and are required to be communicated along with the explanation to the chief executive of the state or tribe on which the site is located.

The Secretary is required to hold public hearings in the vicinity of any site to be recommended before such recommendation occurs. Hearings under this paragraph are to be of an informal nature. At these hearings the Secretary is required to solicit and receive suggestions regarding the scope and content of environmental assessments and characterizations plans to be prepared for further site study. The Secretary is intended to adopt suggestions to the extent practicable.

Section 112(c) permits the President to review and either approve or disapprove the Secretary's site recommendations under subsection (b) within 60 days of such recommendation. Failure of the President to either approve or disapprove recommendations shall be considered as approval of the recommendations. Presidential actions must be communicated to chief executives of states or tribes where sites are located.

The President is permitted to delay decisions under the subsection for no more than 6 months if he determines the Secretary has not provided adequate information for his decision.

Section 112(d) authorizes the Secretary to continue identifying new sites for characterization in accordance with procedures under this section.

Section 112(e) provides that each activity of the President or Secretary under Sec. 112 shall be considered a preliminary decision-making activity under the National Environmental Policy Act. No environmental Impact Statement shall be required to be prepared under section 102(C), (E) or (F) of that Act.

Section 113(a) requires the Secretary to carry out site characterization activities in accordance with the provisions of this section at each site approved under section 112.

Section 113(b)(1) sets out in detail the reports, plans and other information which must at a minimum be prepared and provided to the affected State or tribe and to the Commission before the Secretary may proceed to sink exploratory shafts at any site. The materials are intended to assure the availability and distribution of information required by the Commission for oversight of site characterization activities, information considered important or necessary for the Secretary's characterization program and information important and useful to state and tribal understanding and oversight of the site characterization program.

Paragraph (2) requires the Secretary to make available, and hold informal public hearings on, information prepared under paragraph 1.

Paragraph (3) requires the Secretary to keep appropriate State or Indian officials informed regarding the conduct of site characterization activities.

Section 113(c) sets out restrictions on the Secretary's conduct of site characterization activities.

Paragraph (1) limits activities to be conducted at a site to those necessary for evaluation or licensing of the site or for compliance with the National Environmental Policy Act. Site characterization activities are intended to be kept to the reasonable minimum expense and impact and are intended not to be so extensive as to result, through physical impact or through economic commitment, in the prejudicing of decisions regarding further development of the site.

Paragraph (2) discourages the use of radioactive materials at sites being characterized. Such use may be permitted only if the Commission concurs that such use is necessary to application for licensing. If such use is permitted it must involve the minimum amount necessary and no more than the curie equivalent of 10 metric tons of spent fuel. Any radioactive material used at a site must be fully retrievable.

Paragraph (3) requires deliberate decisionmaking, notification and site decommissioning if a site being characterized is found unsuitable for further development.

Section 113(d) provides that each activity of the Secretary under Section 113 which is in compliance with the limitations and requirements of subsection (c) shall be considered a preliminary decisionmaking activity and shall not require the preparation of any environmental impact statement. Activities which may be proposed or implemented not in compliance with subsection (c) may result in a change of the impact of the activity. Particularly, any expansion of activities at a site, whether surface or subsurface activities, may extend beyond a preliminary nature and may require preparation of an environmental impact statement.

Site Approval and Construction Authorization

Section 114 delineates actions required to be undertaken, and the establishment of deadlines for certain of such actions, leading to the selection of a repository site for licensing, and to a decision on a construction authorization for at least one repository for high level nuclear waste and spent fuel.

Section 114(a) sets out procedures and requirements for the Secretary's decision to recommend a site for license application. Prior to recommending a site to the President as suitable for license application, the Secretary is required to hold informal public hearings at the site being considered for recommendation, to have completed characterization of at least 3 sites under section 113, and to have notified the appropriate state or tribal officials of his intent to make such recommendation. No sooner than 30 days following state or tribal notifications, the Secretary may submit a recommendation to the President.

Recommendations made by the Secretary must be based on the record of information developed under this section and section 113.

The Secretary must submit a comprehensive statement of the basis for his decision to the public and the President. In addition to materials prepared or developed under this section or section 113, the statement must include: a final environmental impact statement on the decision prepared pursuant to the National Environmental Policy Act; preliminary comments of the Commission, and any report submitted by the host state or tribe regarding requirements for impact assistance.

The President is required to submit a recommendation of a site for licensing to Congress pursuant to the provisions of this subtitle along with a copy of the Secretary's report.

If a site is disapproved as a result of Congressional or state action or failure to act under section 117, the President must submit a new site recommendation within one year of the disapproval, pursuant to the provisions of this subtitle. Presidential recommendations under this subsection are not considered major Federal actions under the National Environmental Policy Act.

Section 114(b) requires the Secretary to submit an application for licensing of the repository to the Commission not later than 90 days after a recommendation of a site is effective. Copies of such application must be provided to the appropriate state or tribal official.

Section 114(c) requires the Commission to provide to the Congress an annual status report on its consideration of the license application until an operating license for a repository is issued.

Section 114(d) requires the Commission to consider a license application in accordance with the laws applicable to it, except that the Commission shall issue a final decision approving or disapproving issuance of a construction authorization no later than January 1, 1989 or three years after the application is submitted, whichever is later. The Commission can delay its decision by not more than 12 months if it reports a need for such delay to Congress and the Secretary not later than 30 days prior to the deadline.

Section 114(e) requires the Secretary and other Federal agencies to cooperate in negotiating a schedule for Federal decisions and actions necessary to development of a repository. Failures to meet deadlines set out in the schedule are required to be explained to the Secretary and the Congress in a written report by the failing agency which shall include a plan for mitigation of the delay.

Section 114(f). The recommendation by the Secretary under this section of a site considered suitable for license application shall be considered a major Federal action requiring preparation of an environmental impact statement under the National Environmental Policy Act. Compliance with the procedures and requirements of this Act shall be deemed adequate consideration of the need for a repository, the time of initial availability of a repository, and all alternatives to a repository, which issues shall not require consideration in the Secretary's statement. The Secretary shall consider not less than 3 sites recommended and approved under section 112 for site characterization.

The Commission is required to adopt the statement prepared by the Secretary under this subtitle to the maximum extent practicable.

The Secretary's statement is intended to suffice regarding the issues addressed and not be duplicated by the Commission unless the Commission determines, in its discretion, that significant and substantial new information or new considerations render the Secretary's statement inadequate as a basis for the Commission's determinations. The Commission shall not in any statement it prepares with respect to the first repository constructed under this title consider the need for a repository or nongeologic alternatives to the site of such repository.

REVIEW OF SITE SELECTION

Section 115(a) provides that Congress may under special and expedited rules and procedures overrule the disapproval by a state or tribe of a site recommended for development as a repository. If a notice of disapproval is submitted under sections 116 or 117 and such notice of disapproval is not overruled by Congress pursuant to this section the site shall not be considerable for license application for repository development. A site designated under section 114 shall be considered suitable for license application if no notice of disapproval has been submitted under sections 116 and 117 within 60 days of the President's recommendation of the site to Congress under section 114; or the designation it shall be considered effective if Congress overrules a disapproval by a state or tribe pursuant to the provisions of this section.

Under Section 115(b) a notice of disapproval submitted under section 116 or 117 by the appropriate state or tribe will be effective unless Congress overrules such notice by joint resolution within 90 calendar days of continous session following the date of Congressional receipt of such notice.

The subsection sets out special rules and procedures for consideration of a resolution concerning such notice of disapproval by the Congress. Any committees to which such resolutions have been referred may be discharged from consideration of the resolution if such resolution has not been reported by a committee within 60 days of its referral. Amendments to resolutions are not in order during consideration of the resolution by the committee of the whole.

Section 115(c) sets out the method by which days shall be computed for purposes of subsection (b). Continuity of session of Congress is broken only by an adjournment sine die, and days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 90-day period or the 60-day period, as the case may be.

Section 115(d) provides that the Commission may provide Congress with comments on any license application under section 116 or 117 and such comments shall not be construed as binding the Commission with respect to any licensing action concerning the repository involved.

Participation of States

Section 116 provides rights and financial assistance for state participation in repository siting and licensing decisions.

Section 116(a) authorizes the governor and legislature jointly of each state where a site is recommended for development under section 114 to submit a notice of disapproval of such site to the Congress. Any notice of disapproval issued pursuant to the provisions of this section is effective unless it is overruled by Congress pursuant to section 115. A notice of disapproval may be submitted by any other person or entity designated by the governor and the legislature pursuant to state law.

A notice of disapproval may be submitted to Congress not later than 60 days after the date that the President recommends a site in the state for license application under section 114. Such notice shall be considered submitted to Congress on the date of its transmittal to the Speaker of the House and the President pro tempore of the Senate. The notice must be accompanied by a statement of the reasons explaining why the governor and legislature disapproved the recommended site.

The authority of the governor and legislature under this section is not applicable to any site located on a reservation. Such sites are under a jurisdiction of the affected tribe, pursuant to section 117.

Section 116(b) provides for financial and technical assistance to states. Grants are required to be provided to states during site characterization periods to cover up to 75 per cent of state's costs in participating in review of the site being studied. If a site is approved by the Commission for repository construction, impact assistance grants will be made to cover any social, economic, environmental or other impacts a state expects from such development. In addition, payments are required to be made to a state during characterization and further development activities in lieu of taxes which a state would receive were this project taxed like any other industrial activity in the state. Grants and payments made under this section shall be made out of amounts collected from generators of or owners of high level waste or spent nuclear fuel and held in the Nuclear Waste Trust Fund established in section 124.

States are required to provide at least 25 percent of the costs of the activities undertaken under this section. Expenses ordinarily incurred by the state or any political subdivision of the state are not eligible for funding under this section. States must use not less than $100,000 annually of grants received under this section to provide and disseminate information to the public regarding site development activities.

Paragraph (2) requires the Secretary to provide technical and financial impact assistance to any state where a construction permit for a repository is approved which requests such assistance. States are required to prepare a report on impacts which are likely to result from repository development and to submit such report to the Secretary prior to the Secretary's recommendation of the site to the President under section 114. The Secretary is required to submit such report to Congress together with the Secretary's estimate of the total cost of implementing the impact assistance plan. The Secretary is required to commence providing assistance to states under this paragraph as soon as practicable following granting by the Commission of a construction authorization for a repository in the state and following completion of judicial review of any action seeking to prohibit such construction.

Paragraph (3) requires the Secretary to grant to states where sites are being characterized or otherwise developed payments in lieu of taxes which would be paid if the project or facility were taxed like other industrial activities in the state. The payments are intended to be based on the assessed value of the activities in the year for which the payment would be levied.

Paragraph (4) sets termination dates for payments made under this section. Payments made to states generally must terminate with activities in the state, when a site is disqualified from consideration or when an operating license is issued for the repository concerned, except that impact assistance and payments in lieu of taxes may continue as appropriate through operation and decommissioning of the facility.

Section 116(c) provides notification and consultation rights for states where repository sites are located within the boundaries of an Indian reservation. In such cases, the Secretary is required to notify and consult with such states whenever he is required to notify or consult with the Indian tribe.

Consultation With State and Indian Tribes

Section 117 requires the Secretary to establish and negotiate with states and tribes where repository sites are being studied or developed agreements regarding participation in decisionmaking and provision of information. Such consultation agreements are required to be entered into with both affected states and affected Indian tribes within the state whether the site is on a reservation or on state lands. The Secretary is required to resolve concerns and requests of states and tribes under this subsection, pursuant to procedures negotiated, to the maxiumum extent feasible.

Participation of Indian Tribes

Section 118 provides for Indian tribes the same rights and assistance provided for states when a site being studied or developed for use as a repository is located within the boundaries of an Indian reservation. Participation by Indian tribes differs only in that grants made for participation in site investigation prior to licensing action are provided to cover only 75 percent of state costs, while such grants are required to cover 100 percent of costs incurred by a tribe.

Judicial Review of Agency Actions

Section 119(a) provides that the U.S. Court of Appeals for the District of Columbia, acting as a special court, shall have original and exclusive jurisdiction over civil action taken under this act by the Secretary, the Commission or the President except for review by the Supreme Court. Civil actions include actions for review of actions taken under the subtitle, actions alleging the failure to take action under the subtitle, actions challenging the constitutionality of decisions made or actions for review of environmental impact statements prepared pursuant to the National Environmental Policy Act.

Section 119(b) requires the D.C. Court of Appeals to exercise its powers to expedite consideration of cases over which it has jurisdiction under this section.

Section 119(c) provides that civil actions for judicial review described under this section may be brought not later than the 180th day after the date of the action or decision or failure to act involved. If a person can show that he did not know of the action involved and can show that a reasonable person would not have known, such party may bring a civil action not later than the 180th day after the date on which such party acquired actual or constructive knowledge of such decision, action or failure to act.

Expedited Authorizations

Section 120 requires Federal officers or agencies to expedite consideration of authorizations required for the construction or initial operation of a repository developed under this subtitle. Authroizations issued or granted under this section shall include such terms and conditions as may be required by law, and may include terms and conditions permitted by law.

Certain Standards and Criteria

Section 121(a) requires the Administrator of the Environmental Protection Agency to promulgate general standards for protection of the general environment from radioactive material in repositories no later than one year after the date of enactment of this Act.

Section 121(b) requires the Commission to promulgate technical requirements and criteria for approving or disapproving license applications for repositories, applications for licenses to receive and possess spent nuclear fuel and high level radioactive waste in such repositories and applications for authorization for closure and decommissioning of such repositories. Such requirements and criteria are prohibited from being inconsistent with comparable standards promulgated by the Administrator under subsection (a). The Commission is not prohibited from promulgating and implementing requirements and criteria before the Administrator promulgates standards under subsection (a). The Commission is required to revise its requirements following promulgation of standards by the Administrator, if necessary.

Section 121(c) provides that promulgation of standards or criteria under this section shall not be considered a major Federal action requiring preparation of any environmental impact statement under the National Environmental Policy Act.

Disposal of Spent Nuclear Fuel

Section 122 requires that any repository constructed under this Act be designed to permit retrieval of any spent fuel placed in the respository. Such retrieval may be necessary or desirable for public or environmental protection, to permit recovery of economically valuable contents of spent fuel or to reduce cost or improve operations of the repository. Any period of retrievability must, however, be planned and intended prior to repository construction and must be integrated into the design of the repository and reviewed and approved as part of the design by the Commission in its normal licensing process.

Accounting of Expenditures

Section 123 requires the Secretary to keep records of expenditures made under the subtitle or under other laws which are the basis of the fees assessed as described in section 124.

Nuclear Waste Trust Fund

Section 124 authorizes the Secretary to contract with utilities or other agents requiring use of repositories constructed under this Act to provide repository services in exchange for payments by repository users to cover program costs. Funds collected under this section are required to be paid into a special trust fund and used only for expenses of repository development authorized under this subtitle. Requirements and procedures are set out for management of the fund, use of the fund, and establishment of appropriate fees and methods of collection.

Section 124(a) authorizes the Secretary to enter into contracts with any person who generates or holds title to high-level radioactive waste or spent fuel for the disposal of such waste or fuel. Fees paid to the Secretary under such contracts are required to be sufficient to offset all expenditures necessary and incidental to the repository development program as described in subsection (d).

A report to Congress establishing annual payment charges for these contracts to be calculated on an annual basis is required to be submitted to Congress no later than 180 days from enactment of this Act. The charges are required to be published in the Federal Register and to become effective not less than 30 days after publication. The charges as published in the Federal Register are to remain effective for 12 months. The Secretary is required thereafter to establish the payment charge by rule and review the charge annually.

All persons desiring to dispose of high level waste or spent fuel in repositories constructed under this subtitle are required to pay a ratable portion of the costs of such disposal. Payment schedules are required to be developed by the Secretary for applicability to persons entering into contracts with the Secretary under this section. The Secretary is also required to establish appropriate payment schedules for persons not entering into contracts but also desiring at some time to use the repository.

Paragraph (3)(A) requires full pre-disposal payment to be made for spent fuel assemblies placed into reactors after July 30, 1983. The payment is required to be made in equitable installments over the time the assembly is in the reactor core, generally a period of from three to five years.

Paragraph (3)(B) requires full payment over a 10-year schedule to be made for spent fuel assemblies placed into reactors before July 30, 1983.

Paragraph (3)(C) requires generators or owners of high level waste who enter into contracts with the Secretary under this section to pay for disposal of the waste in equitable payments over a

10-year period beginning at such time as the generator or owner has entered into such contract.

Paragraph (3)(D) requires the Secretary to establish another fee schedule applicable to parties which desire to dispose of spent fuel or high level waste in a repository constructed under this Act but which are a department of the United States referred to in section 110 or 102 of title 5 of the United States Code or who for other reasons are not required to enter into contracts under this section. Such fee schedule shall provide for full payment of the appropriate ratable portions of costs prior to disposal of such waste or spent fuel in any repository constructed under this Act.

Paragraph (4) requires that all contracts entered into by the Secretary for the disposal of spent fuel or high level waste in facilities constructed under this Act contain certain conditions:

Paragraph (4)(A) requires that under such contracts the Secretary will be required to take title to high level waste or spent fuel, at the request of the generator, as expeditiously as practicable following commencement of operation of a repository, and

Paragraph (4)(B) makes the Secretary responsible for disposing of high level waste or spent fuel as provided under this subtitle in permanent disposal facilities, beginning not later than January 1998, in return for the payment of fees established by this section.

Paragraph (5) requires the Secretary to establish in writing criteria setting forth terms and conditions under which disposal services will be made available under contracts entered into under this section.

Paragraph (6) requires the Secretary to begin collecting fees under contracts entered into under this section as soon as is practicable.

Section 124(b) requires owners or generators of high level waste or spent fuel who are licensed for associated purposes under the Atomic Energy Act by the Nuclear Regulatory Commission to enter into contracts with the Secretary under this section for disposal of such waste or fuel. Contracts are required to be entered into as a condition of the Commission's licensing. Licensees generating these materials must enter into these contracts no later than June 30, 1983, or the date on which waste or spent fuel is generated or acquired, whichever is later, in order to be eligible to use a repository. United States agencies or departments may be eligible for use of a repository constructed under this Act at any time, although they must pay for such use an amount equivalent to that being paid by other users of the repository prior to the Secretary's disposing of the waste or spent fuel.

Section 124(c) establishes a special trust fund consisting of money collected by the Secretary under contracts or other payments under this section, any appropriations Congress may make into the Fund, and any unexpended funds previously appropriated for Federal activities necessary or incident to high level waste or spent fuel disposal activities affected by this Act.

Section 124(d) describes and limits the uses to which funds collected for and deposited into the Nuclear Waste Trust Fund may be diput. The fund is intended to be used only for Federal activities directly related to the development of licensed repositories for high level waste and spent fuel, and for such treatment or packaging as is technically required to be accomplished prior to disposal of such waste or fuel. Facilities at a repository site and necessary or incident to the repository include only those facilites necessary to the safe and efficient operation of the repository. Facilities contemplated as part of the repository system to be covered by the trust fund include waste handling facilities, and storage capacity for spent fuel and high level waste adequate to provide for holding of the materials for logistical purposes to accomodate loading schedules. Facilities for the reprocessing of spent fuel are not necessary to the operation of the repository, and therefore neither reprocessing facilities nor facilities incident to reprocessing for the solidification of resulting liquid wastes would be covered by the fund. Facilities for long-term storage of spent fuel for purposes of "banking"fuel for the possible future economic value of its plutonium content are not considered necessary to the repository or appropriate for coverage by the fund. Facilities for long-term storage of spent fuel or high level waste for purposes of cooling the material in order to provide greater holding capacity or greater safety in the repository are not contemplated as appropriate for coverage by the fund. There is no conclusive technical justification for such cooling or for reprocessing of spent fuel for waste management purposes, nor is there adequate analysis of the socio-political or economic costs and benefits of cooling or reprocessing for these purposes.

In addition to expenses directly and technically related to repository development, the Fund covers the costs of participation by states and Indian tribes in repository site selection, development and operation, and of impact assistance to states and Indian tribes where repositories have received construction permit authorization from the Commission. The manner and extent of payments of this nature are described in sections 116 and 118 this Act.

This Act authorizes the Secretary to use the fund to construct at least one repository. No other facility may be constructed or expanded using amounts from this trust fund unless such construction or expansion is expressly authorized by this or subsequent legislation. No other facility is authorized to be constructed or expanded using amounts from the fund in this legislation.

Section 124 (e) sets out procedures and requirements for the administration of the trust fund by the Secretary and the Secretary of the Treasury. The Secretary of the Treasury is required to hold the Fund and to report annually to the Congress, after consultation with the Secretary, on the financial condition and operations of the Fund during the preceding fiscal year.

The budget of the Fund is subject to triennial authorization by Congress and triennial review by the Office of Management and Budget in accordance with the Budget and Accounting Act. The Secretary may make expenditures subject to appropriations which shall remain available until expended.

The fund is required to be managed in order to assure that reasonable interest will be accrued for any excess funds, and reasonable interest will be paid if the Secretary must borrow to cover expresses at some time during the implementation of this Act. Although the Secretary is given authority to borrow to cover expenses, it is intended that revenues at least match expenditures to the extent practicable and that borrowing will be minimal. Analysis by the Congressional Budget Office has shown that heavy borrowing can greatly increase the cost of the wate management program.

Any appropriations made into the fund to cover the direct costs of the authorized program shall be repaid from the Fund to the general fund of the Treasury, together with appropriate interest from the date of availability of the appropriations until the date of repayment. This requirement is not intended to apply to money paid into the fund through appropriations pursuant to transfers by any department of the United States to the Secretary of amounts equivalent to fees paid under contracts for use of the repository for purposes of disposal of high level waste or spent fuel, as may be tranferred pursuant to section 124(b)(4).

Title to Material

Section 125 provides that acceptance by the Secretary of high level waste or spent fuel delivered to a repository constructed under this subtitle shall constitute transfer to the Secretary of title to such waste or fuel. Delivery of waste or fuel to the Secretary at a facility which is not a repository constructed under this subtitle is not intended to constitute transfer of title to the Secretary. Transfer of waste or fuel is not required to be accepted by the Secretary, and the Secretary is not intended to accept such waste or fuel, unless the repository is constructed and operating and the Commission has authorized the Secretary to possess such material pursuant to requirements for licensing under the Atomic Energy Act.

Termination of Certain Provisions

Section 126 terminates the effectiveness of provisions relating to the creation of special courts and expediting of Federal actions for repositories under this Act at such time as licensed operation of at least one repository is commenced. Other provisions of the subtitle are applicable to development, construction, operation and decommissioning of any other repositories developed under the subtitle, and other provisions of the Act are not subject to termination.

SUBTITLE B—INTERIM STORAGE PROGRAM

Available Capacity for Interim Storage of Spent Nuclear Fuel

Section 131 requires the Secretary, the Commission and other authorized Federal officials to take such actions as they consider necessary to encourage and expedite the use of spent fuel storage capacity at sites of civilian nuclear power plants consistent with protection of public health and safety and the environment, applicable law and certain other considerations.

Section 132(a) requires the Secretary to establish a program for the commercialization of new technologies for storage of spent fuel at reactor sites. The Secretary is required to commercialize technologies for spent fuel storage which can be licensed generically with as little site-specific review and approval as is practicable. Spent nuclear fuel storage cask technology is an example of the type of technology the Secretary is intended to develop under this section.

Section 132(b) requires the Commission to develop, by rule, procedures and standards for the licensing on a generic basis of at-reactor interim storage technology. The Commission is required to minimize the need for site-specific approvals in the process, to the extent practicable.

Section 132(c) limits the issues which the Commission can consider in determinations regarding licensing of increased storage capacity at licensed civilian nuclear power reactors. The intention of the committee is that the Commission, in considerating applications for licenses, license amendments to other approvals which would result in increasing interim storage capacity at reactor sites, limit its review to issues directly related to the safety of the proposed new facility or addition to or revision of an existing facility. The committee also intends that the Commission avoid reconsidering issues already raised and decided by the Commission in connection with the issuance of a construction permit or operating license for a nuclear power reactor at the site.

This limit on Commission review terminate as of December 31, 2005.

Storage of Spent Nuclear Fuel

Section 133(a) authorizes the Secretary to provide not more than 1,700 metric tons of storage capacity for civilian spent nuclear fuel, subject to the determinations required in subsection (b), at facilities currently owned by the Federal government, at the sites of civilian nuclear power reactors or at a site for which the Commission has approved an authorization for construction of a repository. Use of Federal facilities under this section would not render such facility subject to licensing by the Commission unless such licensing was otherwise required, and would not be considered a major Federal action under the National Environmental Policy Act, if the facility is already being used for spent fuel storage or has been so used in the past.

Section 133(b) authorizes the Secretary to enter into contracts with the generators or owners of spent fuel for the provision of storage capacity if such owners or generators can show both that use of Federal capacity is necessary due to the generator or owners' inability to provide such capacity in a timely manner, and that the generator or owner is diligently pursuing alternatives to the use of Federal capacity. The committee considers diligent pursuit of alternatives to be represented by application for and processing of licenses or other authorizations necessary to acquisition of storage capacity, together with the existence of or evidence of good faith efforts to enter into contracts for the necessary acquisition of capacity with parties other than the Federal government. It is assumed that any need for Federal interim storage capacity will be a short-term capacity shortfall rectifiable by the generator or owner of spent fuel, particularly in light of technology and licensing assistance provided by this subtitle.

Section 133(c) authorizes the Secretary to provide 100 metric tons of spent fuel storage capacity, in addition to the 1,700 metric tons authorized in subsection (a), to be available in the event that the United States is required to take back spent fuel from foreign reactors in emergencies related to the non-proliferation of nuclear weapons. The Secretary is not required to make determinations regarding availability of other storage capacity in order to make this capacity available.

Section 133(d) prohibits the Secretary from purchasing, leasing or acquiring any privately-owned spent fuel reprocessing facility for the purpose of providing storage for civilian spent fuel under this subtitle. The section also requires the Secretary to remove any spent nuclear fuel stored at Federal facilities or other sites under this subtitle from such storage as soon as practicable following the date a repository begins operation.

Section 133(e) requires the Secretary to provide an annual report to Congress on his efforts to implement this subtitle.

Monitored Retrievable Storage

Section 134 requires the Secretary to submit to Congress a proposal for construction of one or more storage facilities for civilian high level waste or spent fuel designed to store such fuel or waste for the foreseeable future. The section also sets out certain exemptions, licensing requirements and state assistance programs which would be applicable to a program to construct such a facility if such a program were ever authorized by Congress.

Storage of Transuranic Waste

Section 135 requires the Secretary to make available Federal facilities for storage of transuranic waste from decontamination and decommissioning of commercial nuclear facilities, except for nuclear reactors and other utilization facilities. The Secretary is required to charge reasonable fees to cover the cost of such storage. This program is to terminate at such time as a repository or other facility is available for storage of such wastes, or 6 years after the Commission issues final regulations for licensing of a facility primarily for storage of transuranic waste, whichever occurs sooner. The Commission and the Administrator are required to issue final regulations for transuranic waste disposal, establishing standards and criteria for licensing of such facilities not later than 2 years after the date of enactment of this Act.

Title to Stored Material

Section 135 prohibits the Secretary from accepting title to any spent fuel, high level waste or transuranic waste in providing interim storage for any such material under this subtitle.

Accounting of Expenditures

Section 137 requires the Secretary to keep records of expenditures made under this subtitle which will provide a basis for fees assessed to cover the cost of the activities.

Interim Storage Trust Fund

Section 138(a) authorizes the Secretary to enter into contracts to provide interim storage services under this subtitle. The contracts may provide for interim storage of either transuranic waste or spent nuclear fuel. Such contracts may be entered into only during a one-year period following enactment of this Act. This limit is not applicable to any storage services which may be provided, or contract authority which may be enacted, with regard to any facility which may be authorized to be constructed under section 134.

The Secretary is required to compute the total storage capacity that will be provided as a result of these contracts upon the expiration of such one-year period. This total represents the total capacity the Secretary is authorized to provide, up to 1,700.

The Secretary is required to calculate and publish annually payment charges for services under this section. The Secretary is required to commence collection of these fees as soon as is practicable.

Section 138(b) prohibits the storage of spent fuel or transuranic waste under this section by departments of the United States unless such department pays for such storage a fee equivalent to that collected by the Secretary under subsection (a) of this section.

Section 138(c) establishes a separate Interim Storage Trust Fund. The Fund is required to be established and managed in a manner and according to procedures similar to those affecting the Nuclear Waste Trust Fund for repositories.

TITLE II—OTHER PROVISIONS RELATING TO RADIOACTIVE WASTE

SUBTITLE A—USE OF CERTAIN MATERIAL FOR NUCLEAR EXPLOSIVE PURPOSES

Use of Special Nuclear Material

Section 201 prohibits the transfer or use by any person or organization of any spent nuclear fuel from civilian nuclear reactors as a source of plutonium or any other raw material for the manufacture of nuclear weapons. This section does not apply to special nuclear material exports covered by other applicable provisions of law, including nuclear non-proliferation laws and laws governing exports of nuclear material.

SUBTITLE B—ALTERNATIVE MEANS OF FINANCING STUDY

Section 211 requires the Secretary to study and report to Congress regarding alternative institutional approaches to management of the the nuclear waste system. Options for management systems could include private corporations, quasi-governmental corporations or independent government agencies. It is expected that any management system would be closely related to and directly overseen by the Federal government since the Federal government is likely to have the longest stable institutional life of any organization in a position to monitor and protect repositories over milenia.

SUBTITLE C—LOW-LEVEL RADIOACTIVE WASTE

Financial Arrangement for Site Closure

Section 221 sets out standards for the adequate stabilization and long-term protection of sites for the disposal of low level radioactive waste.

Section 221(a) requires the Commission to establish standards and instructions necessary or desirable to ensure that owners or operators of low level radioactive waste burial gounds make financial arrangements to assure that such burial grounds will be stabilized prior to termination of licenses for such facilities, and that funds will be available as necessary for any required maintenance or monitoring of such facilities following license termination.

Section 221(b) provides the Secretary with authority to assume custody of low level radioactive waste disposal sites following termination of licenses for such sites. The Secretary shall not accept custody of such sites unless the Commission has determined that its requirements for decommissioning and stabilization of the sites have been met, that adequate financial arrangements have been made by the licensee for long-term care of the site, that title will be transferred without cost to the Federal government and that Federal ownership and management of the site is necessary and desirable to protect public health and safety and the environment.

The Secretary is required to maintain such waste and land in a manner that will protect public health and safety and the environment.

Noncommercial Disposal Sites

Section 222(a) allows the Secretary to assume custody of low level waste disposal sites contaminated as a result of activities conducted under contract to the Atomic Energy Commission or the Manhattan Engineering District, only if removal of such waste from the site is not practicable.

Section 222 (b) and (c) provide that the same financial arrangements and decommissioning and stabilization requirements applicable to disposal sites under subsection (a) must be applied to sites offered for Federal custody under this subsection. Approrpriate federal arrangements must be secured and sites must be in compliance with other Commission stabilization and site closure requirements before the Secretary can accept custody of such sites under this section.

SUBTITLE D—OFFICE OF RADIOACTIVE WASTE MANAGEMENT

Establishment

Section 231 establishes a separate office for carrying out waste management activities under this Act within the Department of Energy. The Director of the Office is required to be directly responsible to the Secretary, and appointed by the President and confirmed by the Senate.

Section 232 requires the Director of the Office to report annually to Congress on the activities and expenditures of the Office.

Section 233 requires the Office of the Comptroller General to annually audit the Office, gives the Comptroller access to Office records, and requires the Comptroller to report such audit annually to Congress.

COST AND BUDGET ACT COMPLIANCE

The Committee received, and adopts as its own, the following analysis from the Congressional Budget Office:

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

APRIL 26, 1982.

1. Bill number: H.R. 3809.
2. Bill title: Nuclear Waste Policy Act of 1982.
3. Bill status: As ordered reported by the House Committee on Interior and Insular Affairs, March 17, 1982.
4. Bill purpose: The bill authorizes the construction of a repository for the disposal of high-level radioactive waste or spent fuel and authorizes financial assistance to states and Indian tribes in whose jurisdiction a repository is sited. A nuclear waste trust fund is established in the Treasury into which contract payments for the disposal of spent fuel will be made to finance the siting, construction, and operating activities of the repository. The bill also requires the Secretary of Energy to provide no more than 1,700 metric tons of storage capacity for the interim storage of spent fuel and to submit a proposal for the construction of a monitored retrievable storage facility for use as an interim storage facility. To provide the additional interim storage capacity, the Secretary can acquire existing capacity or construct a new facility. The additional interim storage capacity would be financed through contracts with the persons generating the spent fuel, which would be paid into an interim storage trust fund established in the Treasury. Spending from both trust funds is subject to appropriations and triennial authorizations.

The bill also authorizes the federal government to assume title to existing low-level radioactive waste disposal sites, establishes an Office of Radioactive Waste Management, and requires a study of alternative approaches to managing waste management facilities.

5. Cost estimate: The estimated cost of this bill between fiscal years 1982 and 1986 is $2 billion for the research and development and siting activity associated with the repository, and development of interim storage facilities. Net outlays, however, may be positive or negative, depending on the fee schedule established for the disposal of spent fuel by the Secretary of Energy. Not all costs of the bill will be covered by contract payments. According to the Committee staff, fees would be set to cover the projected costs of siting, construction, operations, and a portion of research and development costs. Those costs not financed through contract payments would require additional appropriations.

A substantial portion of the costs associated with H.R. 3809 will occur after 1986. Depending on the rate of inflation, delays in the program, potential technological difficulties, and other uncertainties, gross outlays by the year 2000 could total at least $10 billion to $13 billion. Net outlays will depend on the extent to which research costs are covered by contract payments and on the adequacy of the contract fees determined by the Secretary of Energy.

The costs of this bill fall within budget function 270.

6. Basis of estimate: For the purposes of this estimate it was assumed that the bill would become effective in June 1982 and that a supplemental appropriation would be enacted by July 1982. As a result, significant outlays would not occur until fiscal year 1983. In addition, CBO assumed that interim storage would be provided through construction of an away-from-reactor (AFR) facility.

Costs that will be incurred between fiscal years 1982 and 1986 are related to the development of the AFR facility, the repository siting and licensing program, and civilian technology development. The estimate is based on data provided by the Department of Energy and assumes a pattern of activity that would allow construction of the AFR facility to begin in fiscal year 1986 and construction of a repository by fiscal year 1989. The estimated costs represent the budget authority necessary to be consistent with those assumptions. The total estimated cost of $2 billion between 1982 and 1986 includes $0.2 billion for development of the AFR, $0.9 billion for siting and licensing, and $0.9 billion for civilian technology development.

It is expected that a majority of the costs of this bill will be incurred by the year 2000 when repository construction is expected to be completed and the facility operational. The costs of the bill are projected based on Department of Energy estimates, adjusted for inflation. It is estimated that construction of the AFR facility would cost approximately $0.2 billion, with an additional $0.8 billion needed for operating and licensing costs through fiscal year 2000, assuming completion of the facility by fiscal year 1989. CBO estimates that construction of the first repository would cost between $3.0 and $3.4 billion if construction begins in fiscal year 1989. If it is assumed that beginning in fiscal year 1986 price increases average 5 percent annually, the total cost of the bill through the year 2000 would exceed $10 billion. If the estimated annual increase were raised to 7 percent, the projected costs would exceed $11 billion. It is not unusual for major government capital projects—defense systems, dams, rail systems, space programs, etc.—to cost substantially more than originally estimated, due to delays, overruns, changes in specifications, higher than anticipated inflation, and other factors. Thus, construction delays of only 2 to 3 years, plus a 10 percent increase in costs, could raise the cost of the bill to over $13 billion—and greater increases are certainly possible.

Contracts for the disposal of spent fuel would provide financing for all the costs of licensing, siting, construction, and operations of the repository. According to the Committee staff, only a portion of the research and development costs associated with development of the repository will be financed by the contract payments. If contracts were based on the rate of spent fuel produced, CBO estimates that at least $13 billion in receipts will be required to finance the siting, construction, and operations of a repository by the year 2000, based on the minimum estimated cost for such activities. This would provide sufficient funds to operate and decommission the repository by 2025. If all research and development costs are financed by contract payments, at least $15 billion in receipts would be required by the year 2000. In addition, contracts for the storage of spent fuel would have to generate approximately $1 billion to cover the expected costs. If contract payments cover the costs of interim spent fuel storage and the repository, the only net cost to the government would be any of the $2.5 billion in research and development costs that are not covered by these payments.

The bill also provides for the assumption of low-level waste facilities by the federal government. Because the bill requires the owner of the site to provide a financial arrangement in accordance with Nuclear Regulatory Commission guidelines to cover the costs of monitoring the facility, no additional costs to the federal government should be incurred.

7. Estimate comparison: None.

8. Previous CBO estimate: On December 9, 1981, CBO prepared an estimate for H.R. 5016, the High-Level Radioactive Waste Management and Policy Act, as ordered reported by the House Committee on Science and Technology, November 20, 1981. The House version of the bill authorized at least two repositories and construction of a test and evaluation facility. The costs between 1982 and 1986 were estimated to be $1.8 billion, with costs through the year 2000 to total between $14 billion and $20 billion, all of which would be offset through contract payments from operators of civilian nuclear power plants. CBO estimated that under the House bill, the nuclear waste fund would achieve a $400 million surplus by 1986, assuming imposition of a 1.0 mill per kilowatt hour fee.

CBO prepared an estimate on January 20, 1982, for the Senate Committee on Energy and Natural Resources on its version of S. 1662, the National Nuclear Waste Policy Act of 1981, as ordered reported on November 16, 1981. The estimated cost of $14 billion to $18 billion assumed construction of an AFR facility and only one repository, includes the estimated costs of research and development for defense waste technology, and also includes specific provisions for a 1.0 mill per kilowatt fee, which would generate an estimated $14 billion in receipts by the year 2000.

On January 27, 1982, CBO prepared an estimate for the Senate Committee on Environment and Public Works version of S. 1662. This version of S. 1662, estimated to cost at least $19 to $25 billion by the year 2000, includes construction of two repositories and an AFR, and research and development into defense waste technologies. The bill provides for a fee of 1.0 mill per kilowatt hour on electricity generated by civilian nuclear power plants.

9. Estimate prepared by: Jeffrey W. Nitta.

10. Estimate approved by:

JAMES L. BLUM,
Assistant Director for Budget Analysis.

OVERSIGHT STATEMENT

The Subcommittee on Energy and the Environment has shown great diligence in reviewing all aspects of nuclear energy policy—including questions of nuclear waste disposal. It is anticipated that interest will be maintained in future years and that this Committee will continue to vigorously pursue its oversight responsibilities.

No recommendations have been received by the Committee pursuant to Rule X, clause 4(c)(2).

Committee Recommendation and Vote

On March 17, 1982, the Committee on Interior and Insular Affairs completed its consideration of H.R. 3809, adopted an amendment in the nature of a substitute and approved the bill, as amended, by voice vote. Accordingly, the Committee recommends the enactment of the bill, as amended, by the House.

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ADDITIONAL VIEWS

There can be no argument that civilian nuclear waste is a problem that must have a solution. The health and safety perceptions of the public, and the future of the nuclear industry, are balancing on a solution to the storage and handling of the waste generated by civilian reactors.

The Interior and Insular Affairs Committee has completed its responsibility in reporting a nuclear waste bill. What is important is that all of the committees involved complete their work so this Congress can pass legislation that can be on the President's desk this year.

However, this bill is not without its flaws.

The Committee sought to be "neutral" in its legislative language regarding licensing and applications. While the goal and intent of the Committee was laudable, the bill's "neutrality" begs a very important point. The fact is, existing law specifically states that defense nuclear materials and waste have a special priority and that the Department of Energy has the single responsibility for coordinating DOD waste handling and storage. Present law insists on separating civilian and defense nuclear programs.

In this light, the legislation is no longer neutral. The bill's licensing process and application procedures are expanded because of its silence. The DOE defense program will come under all provisions of this bill. At the very least, the applications and procedures will so cloud the issue that it will probably require judicial interpretation and/or intervention in DOE defense-related programs.

This is unacceptable, but is not without a solution.

During the Committee mark-up I offered an amendment that reiterated existing law to ensure that the Committee's intent was not to commingle civilian and defense nuclear waste handling, storage, and facilities. The language I offered was similar to that which appears in the Science and Technology Committee nuclear waste bill. I did not pursue a roll-call vote on the amendment after it was rejected by a voice vote for the reasons outlined at the very beginning of these remarks.

I would like to cite just two examples to illustrate the need for clarification in this legislation. First, the "definitions" section of the bill does not distinguish between defense and civilian "high-level radioactive waste", "spent nuclear fuel", or "the withdrawal of spent nuclear fuel from nuclear reactors".

Second, scattered throughout the storage and licensing provisions of Sections 133, 133A, and 134 are references to the "use of available capacity at any facility owned by the federal government". There is no specific provision for defense facilities, or the ability of a facility to properly handle wastes. Hence, a defense air base would be a site for the storage of "high-level radioactive waste". In addition, the only "high-level" or "transuranic" waste facilities owned by the federal government are those associated with defense programs.

Legislation which could have the effect of licensing defense waste management activities, or imposing standards for waste management by other Federal agencies, could transfer the authority to close down the most crucial facilities and activities of the Federal Government.

There is no doubt in my mind that the intent of the Interior Committee's bill needs to be stated succinctly. Though professed otherwise, silence or "neutrality" in this case does not clearly separate defense and civilian nuclear waste facilities and activities as provided for under existing law.

The Committee is commendably trying to achieve the enactment of a nuclear waste bill that will address the most immediate problem, policy and guidance for civilian nuclear programs. Addressing defense-related nuclear issues later may be worthwhile, but to commingle the two at this time would do a disservice to the public and industry.

BEVERLY B. BYRON.

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